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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 258. 22

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY, APPELLANT,

vs.

TOM NICKALS AND SIDNEY CLARIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 17, 1883.

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1 To the judges of the circuit court of the United States for the southern district of New York:

Tom Nickals and Sydney Claris, copartners in business, trading at the city of London, England, under the firm name and style of Tom Nickals & Co., and subjects of the Kingdom of Great Britain and residents of England, bring this their bill against The New York, Lake Erie and Western Railroad Company, a corporation created, organized, and existing under and by virtue of the laws of the State of New York; Theron R. Butler, Charles Dana, Thomas Dickson, Harrison Durkee, R. Suydam Grant, Solomon S. Guthrie, Hugh J. Jewett, John Taylor Johnston, Edwin D. Morgan, Homer Ramsdell, and William L. Strong, citizens of said State of New York; Cortlandt Parker, a citizen of the State of New Jersey, and J. Lowber Welsh, a citizen of the State of Pennsylvania.

And thereupon your orators complain and say: That they are the owners and holders of shares of the preferred capital stock of said company to the amounts following, to wit: Three thousand three hundred and forty of the kind known as the voting shares, and of three thousand three hundred and forty of the kind known as the non-voting shares, and being stock of the kinds mentioned in the articles of association of said company hereinafter referred to, and they bring this their bill on behalf of themselves and of all other persons and parties, holders and owners of shares of said preferred stock, who may come in and contribute to the expense hereof.

And your orators further state that the said defendant, The New York, Lake Erie and Western Railroad Company, is a corporation organized under and pursuant to a certain statute of the State of New York entitled "An act to faciliate the reorganization of
2 railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11, 1874, and the act amending the same, passed June 2, 1876, and that in and by the articles of association of said company it was, among other things, provided that there should be 85,369 shares of preferred stock of said company of the nominal value of $100 each, entitling the holder thereof to non-cumulative dividends at the rate of six per cent. per annum in preference to the payment of any dividend on common stock; also, that in accordance with a certain plan and agreement, therein mentioned, the power of voting, in respect of one-half of the said preferred stock to be issued by said company, should be lodged with certain voting trustees for that purpose in said articles named, and that the voting trust so created should continue until the full dividend shall have been paid on the said preferred stock for three consecutive years, and that the persons entitled to the stock, subject to such trust, should receive, as evidence of their equitable ownership thereof and of the right to receive any dividends declared thereon, certificates in the ordinary form of share or stock certificates, or as near as might be thereto, and transferable in the manner usual for such certificates, but each bearing an endorsement stating that such certificate did not give the holder a right to vote in respect to the shares represented by it, and that the same should

be subject to the voting trust aforesaid, and that in and by said plan and agreement, which was incorporated in and made part of said articles, it was further provided that said preferred stock should entitle the holders thereof "to non-cumulative dividends at the rate of six per cent. per annum in preference to the payment of any dividend on the common stock, but dependent on the profits of each particular year as declared by the board of directors," as by the said plan and articles, whereof a copy is hereto annexed and made a part hereof, reference being thereunto had, will more fully appear.

And your orators further state that during the year ending 30th September, 1880, the said company used and operated the railroad and property in said articles mentioned, and during said year the gross earnings thereof amounted to $18,693,108.86, and the operating expenses to $11,643,925.35, leaving a balance of net earnings of $7,049,183.51; and that the earnings from other sources than transportation amounted to $783,956.65, and the interest on the
3 funded debt of said company, rentals of its leased lines and other charges amounted to $6,042,519.45. leaving a net profit from the operations of the year of $1,790,620.71, all of which things appear by the official report of the board of directors of said company to its stockholders for said year. That, as appears in and by said report, the said sum of $1,790,620.71, being the net profits of the operations of said year, was applied to the building of double track, erection of buildings, providing additional equipment, acquiring and constructing docks at Buffalo and Jersey City, and to the addition of other improvements to the said road and property.

And your orators further state that, in and by said report, the amount of said preferred stock issued is stated in one instance at $8,156,725, and in another instance as $7,367,700—and your orators do not know which of these two figures is correct—and that payment of a 6 per cent. dividend upon the greater amount would require $489,403.50, a sum much less than the said net profits of said year. That said company and its directors have been requested to pay a dividend upon said preferred stock out of the said net profits, but have neglected and refused to do so.

And your orators further state that, in and by their said report, the board of directors of said company have declared that there were profits arising from the use and operation of the property of said company during the year ending 30th September, 1880, out of which the dividend agreed to be paid upon said preferred stock could and should have been paid, but that, notwithstanding the aforesaid provision respecting said preferred stock, the board of directors of said company have appropriated the same to the purposes by them in their report stated, contrary to the intention of the parties entering into said plan and agreement as expressed in said articles of association, and the stipulated rights of the holders of said preferred stock as to the dividends to be paid thereon and the termination of said voting trust and other rights, as defined in said plan and agreement.

And your orators further state that the said defendants, Butler, Dana, Dickson, Durkee, Grant, Guthrie, Jewett, Johnston, Morgan,

Ramsdell, Strong, Parker, and Welsh, together with Henry G. Stebbins, since deceased, James J. Goodwin, John Frederick Pier-
4 son, and James R. Keene, constituted the said board of directors at the time of making said report, and that the defendants so named now are directors of said company, but that said Goodwin, Pierson, and Keene are no longer such directors.

Wherefore your orotors pray that it may be adjudged and declared by this honorable court that the holders of said preferred stock are entitled to dividends at the rate of six per cent. per annum in every year that the net profits of the year, as declared by the board of directors of said company, are sufficient to pay the same, or so far as the said net profits, as so declared, will suffice therefor, and that the net profits of said year ending 30th September, 1880, may be ascertained, and the dividends due to the holders of said preferred stock in respect thereof directed to be paid; and that your orators may have such other or further relief as may be meet.

To the end, therefore, that the said defendants may, if they can, show cause why your orators should not have the relief hereby prayed, and may, upon their respective corporal oaths, and according to the best and utmost of their knowledge, information, and belief, full, true, direct, and perfect answer make to the interrogatories hereinafter numbered and set forth—that is to say:

1. Whether the said corporation, The New York, Lake Erie and Western Railroad Company was organized by means of articles of association filed and recorded in pursuance of the statutes *of the statutes* of the State of New York hereinabove mentioned?

2. Whether said articles of association were adopted in pursuance of a plan and agreement for reorganization, and whether said plan and agreement was incorporated in and made part of said articles of association?

3. Whether said articles of association and plan and agreement contained the provisions expressed in the copy thereof to this bill annexed?

4. Whether any of the preferred stock contemplated in said articles of association and plan and agreement was issued, and, if so, how much of it had been issued at the close of the year ending 30th September, 1880?

5 5. Whether there were profits of the use and operation of the railroad and other property of said company for the year ending 30th September, 1880, and what was the amount of such profits?

6. Whether, at the close of the year ending 30th September, 1880, the board of directors of said company declared that there were profits from the operation of the year of $1,790,620.71 or any other sum?

May it please your honors to grant unto your orators the writ of subpœna, to be directed to the said New York, Lake Erie and Western Railroad Company and the said Theron R. Butler, Charles Dana, Thomas Dickson, Harrison Durkee, R. Suydam Grant, Solomon S. Guthrie, Hugh J. Jewett, John Taylor Johnston, Homer Ramsdell, William L. Strong, Cortlandt Parker, and J. Lowber Welsh, the de-

fendants herein, commanding them, and each of them, by a certain day and under a certain penalty, therein to be inserted, to be and appear before the judges of this honorable court, then and there to answer the premises, and further to stand and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators will ever pray, &c.

TRACY, OLMSTEAD & TRACY,
Solicitors for Plaintiffs, 50 Wall street, New York.
CHARLES TRACY, *of Counsel.*

NOTE.—All the defendants, except the corporation specifically named, are required to answer the interrogatories numbered respectively, 1, 2, 3, 4, 5, and 6.

6 *Certificate of Incorporation of the New York, Lake Erie and Western Railroad Company.*

Whereas the Erie Railway Company was organized under certain acts of the Legislature of the State of New York, passed, respectively, the 4th day of April, A. D. 1860, and the 2d day of April, A. D. 1661;

And whereas, in certain judicial proceedings in the supreme court of the State of New York, being a suit in equity for the foreclosure of a mortgage, in which the Farmers' Loan and Trust Company were plaintiffs and the said Erie Railway Company and others were defendants, a judgment and decree of foreclosure and sale of the franchises and property of said Erie Railway Company was rendered and entered on the 7th day of November, A. D. 1877;

And whereas, at a sale made on the 24th day of April, 1878, by virtue of and pursuant to said judgment and decree, the following-described property, namely, all and singular the railways of the said company from and including Piermont, on the Hudson river, to and including the terminus of the said railway on Lake Erie and the railway known as the Newburgh Branch, from Newburgh to the main line, and also all that part of the railway designated as the Buffalo Branch of the Erie railway, extending from Hornellsville to Attica, in the State of New York, and also all other railways belonging to the company in the States of New York, Pennsylvania, and New Jersey, or any of them, together with all the lands, tracks, lines, rails, bridges, ways, buildings, piers, wharves, structures, erections, fences, walls, fixtures, franchises, privileges, and rights of the said company, and also all the locomotives, engines, tenders, cars, carriages, tools, machinery, manufactured or unmanufactured materials, coal, wood, and supplies of every kind belonging or appertaining to the said company, and all tolls, incomes, issues, and profits arising out of said property, and all rights to receive or recover the same; also all the estate, right, title, and interest, terms and remainder of terms, franchises, privileges, and rights of action, of whatsoever name or nature, in law or in equity, conveyed or assigned unto the New York and Erie Railroad Company, or unto the Erie Railway Company by the Union Railroad Company, by

the Buffalo, New York and Erie Railway Company, by the
7 Buffalo, Bradford and Pittsburg Railroad Company, by the Rochester and Genesee Valley Railroad Company, and by the Long Dock Company; also all and singular the choses in action, stocks, bonds, book accounts, bills receivable, and other evidences of indebtedness, leasehold, estates, contracts, and other property in the said judgment mentioned, except, however, as follows: (1.) A lease of the Atlantic and Great Western Railroad Company to the Erie Railway Company, bearing date July 6, 1874. (2.) A contract between the Atlantic and Great Western Railroad Company of the first part and the Erie Railway Company and others of the second part, bearing date May 6, 1874. (3.) Another contract of same date between the Atlantic and Great Western Railroad Company of the first part and the Erie Railway Company of the second part. (4.) A memorandum of agreement or lease, dated November 8, 1871, between the Erie railway of the first part and Lauren C. Woodruff (lessee of the Erie and Genesee Valley Railroad Company) of the second part; to which said judgment and the inventory therein referred to reference is had for a more particular description of such property, [which] was purchased by David A. Wells, Edwin D. Morgan, and John L. Welsh, the purchasing committee of trustees, under an express trust created and controlled by a plan and agreement entered into on the 14th day of December, 1877, by and between themselves and certain stockholders and creditors of said Erie Railway Company;

And whereas the said purchasers have associated with themselves the following persons:

R. Suydam Grant,
Solomon S. Guthrie,
Hugh J. Jewett,
John Taylor Johnston,
Charles Dana,
Cortlandt Parker,
Homer Ramsdell,
Samuel Sloan,
Henry G. Stebbins,
George F. Talman,
Theron R. Butler,
J. Fred. Pierson,
Jas. J. Goodwin,
Wm. Walter Phelps,

8 And the said associates desire to become a body politic and corporate, and as such to take, hold, and possess the title and property included in said sale:

Now, therefore, in conformity with the provisions of an act of the Legislature of the State of New York, entitled "An act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11th, 1874, and the act amending the same, passed June 2d, 1876—

We, the undersigned, purchasers, as aforesaid, and our associates, do hereby certify:

First. The name of the corporation hereby organized, pursuant to said acts, shall be The New York, Lake Erie and Western Railroad Company.

Second. The maximum amount of the capital stock of the corporation shall be eighty-six million five hundred and thirty-six thousand nine hundred dollars ($86,536,900), to be divided into 85,369 shares of preferred stock, of the nominal value of one hundred dollars each, entitling the holder to non-cumulative dividends at the rate of six per cent. per annum in preference to the payment of any dividend on common stock, and 780,000 shares of common stock, of the nominal amount of one hundred dollars each.

Third. The number of directors of the said corporation shall be seventeen.

Fourth. The names and residences of the persons selected to act as directors for the first year after its organization are as follows:

R. Suydam Grant, New York city.
Solomon S. Guthrie, Buffalo, N. Y.
Theron R. Butler, New York city.
Hugh J. Jewett, New York city.
John Taylor Johnston, New York city.
Edwin D. Morgan, New York city.
David A. Wells, Conn.
Cortlandt Parker, Newark, N. Jersey.
9 Homer Ramsdell, Newburg, N. Y.
Charles Dana, New York city.
Samuel Sloan, New York city.
Henry G. Stebbins, New York city.
Geo. F. Talman, New York city.
J. Lowber Welsh, Philadelphia, Penn.
J. Fred. Pierson, New York city.
Jas. J. Goodwin, New York city.
Wm. Walter Phelps, New Jersey.

Fifth. In accordance with the provisions of a certain plan and agreement, which is hereinafter inserted, and is hereby made a part of this certificate, the power of voting in respect of one-half of the preferred stock and one-half of the common stock to be issued by this corporation shall be lodged with voting trustees, of whom Sir Edward William Watkin, Thomas Wilde Powell, Esq., and John Westlake, Esq., shall be the first. From time to time the voting trustees for the time being may fill any vacancy occurring in their body, and may add to their number, and may exercise their power of voting by a proxy, appointed under the hands of a majority of them for the time being. This trust shall continue until the full dividend shall have been paid on the preferred stock for three consecutive years. The said half of the common and preferred stock respectively shall be actually vested in and held by said trustees. The persons entitled to the stock subject to such trust shall receive, as evidence of their equitable ownership thereof, and of the right to

receive any dividends declared thereon, certificates in the ordinary form of share or stock certificates, or as near as may be thereto, and transferable in the manner usual for such certificates, but each bearing an endorsement, stating that such certificate does not give the holder a right to vote in respect of the shares represented by it, and that the same is subject to the voting trust aforesaid.

Sixth. Holders of the bonds of the Erie Railway Company (the company foreclosed), and also holders of the bonds of the corporation hereby organized, shall have the right of voting at all elections for directors of the company, and at all general meetings of its stockholders, and shall be entitled to one vote for each one
10 hundred dollars in nominal value of the bonds held by them respectively at a date thirty days previous to such election or general meeting.

Seventh. The plan and agreement hereinbefore referred to, and made in anticipation of the readjustment of the respective interests of the mortgage creditors and stockholders of the Erie Railway Company in its property and franchises, is in the words and figures following:

Erie Railway Company.

Plan and agreement for the foreclosure of a mortgage of the Erie Railway Company, known as the second consolidated mortgage, executed and delivered to the Farmers' Loan and Trust Company, February 4, 1874, and for the creation of a new corporation to succeed to all the franchises, rights, and privileges of the said Erie Company, and to take, hold, and possess the mortgaged premises after the foreclosure sales thereof; which plan and agreement is made under and in pursuance of the laws of the State of New York, and particularly an act entitled "An act to facilitate the reorganization of railroads," passed May 11, 1874, and the act amending the same, passed June 2, 1876:

Whereas, on the 1st day of September, 1870, the said Erie Railway Company executed and delivered to the Farmers' Loan and Trust Company of the city of New York a deed of trust or mortgage of its line of railway, property, rights, privileges, and franchises, to secure the payment of certain bonds known as first consolidated mortgage bonds and sterling loan bonds; and whereas, on the 4th day of February, 1874, the said Erie Railway Company executed and delivered to the said Farmers' Loan and Trust Company a certain other deed of trust or mortgage of the same premises to secure the payment of certain other bonds of the said Erie Railway Company therein mentioned, known as second consolidated mortgage bonds and gold convertible bonds, all of which will fully and at large appear in and by the said deeds, reference thereto being had; and whereas there have been issued fifteen million dollars of the second consolidated mortgage and ten million dollars of the gold convertible bonds, making together twenty-five million dollars; and whereas, default having been
11 made in the payment of interest, as well upon the bonds issued under and secured by the said first-mentioned mort-

gage, as upon the bonds issued under and secured by the said last-mentioned mortgage, the said Farmers' Loan and Trust Company did, on or about the 15th day of June, 1875, commence an action in the supreme court of the State of New York for a foreclosure of each of the said mortgages, and did shortly thereafter commence ancillary actions for the foreclosure of the same mortgages in the respective States of New Jersey and Pennsylvania, in which States, respectively, certain parts of the mortgaged premises are situate, in all of which actions the Hon. Hugh J. Jewett was appointed receiver of the mortgaged premises, and is now such receiver, and all of which actions are now pending and being prosecuted to final decrees of foreclosure and sale; and whereas the bonds secured by the first above-mentioned mortgage are outstanding, with interest thereon from the 1st of March, 1875, with the exception of the coupon falling due on the 1st day of September, 1876, belonging to such of the holders of the first consolidated mortgage bonds as have agreed to fund certain of their coupons as hereinafter mentioned; and whereas the bonds of the said Erie Railway Company secured by the secondly above-mentioned mortgage are outstanding, with interest thereon, in the case of the second consolidated mortgage bonds, from the 1st day of December, 1874, and in that of the gold convertible bonds from the 1st day of April, 1875; and whereas, upon careful consideration of the premises, it appears to be necessary to the protection and preservation of the just rights of the parties interested in the mortgaged premises that they should co-operate for the protection and preservation of their respective interests and the readjustment thereof upon a just and equitable basis, having due regard to priority of lien and to the probable net earnings of the railroad property in question on the reorganization and improvement thereof as contemplated.

Therefore it is agreed by and between the undersigned, Oliver Gourlay Miller, Esq., Henry Rawson, Esq., John Kynaston Cross, Esq., M. P., John Westlake, Esq., Q. C., Peter McLagan, Esq., M. P., Benjamin Whitworth, Esq., M. P., Sir Edward William Watkin, M. P., and Thomas Wilde Powell, Esq. (holders of common stock
12 of the Erie Railway Company, of preferred stock of the said company, of coupons of the said first consolidated mortgage and sterling loan bonds, and of bonds and coupons of both the second consolidated mortgage and gold convertible), parties of the first part, and Edwin D. Morgan, John Lowber Welsh, and David A. Wells, purchasing trustees or committee, parties of the second part, as follows—that is to say:

1. The parties of the first and second parts shall co-operate with the Farmers' Loan and Trust Company in the prosecution of the several actions to final foreclosure and sale in the respective States under the said mortgage of the 4th day of February, 1874, and in all proceedings for that purpose.

2. At such foreclosure sale or sales the parties of the second part shall purchase (provided that a sufficient number of bonds and coupons and such other means as may be necessary to make such purchase practicable shall have been placed at their disposition) all

and singular the property, rights, and franchises sold at each sale for the purposes of this agreement. The said parties may, in their discretion, with the consent of the parties of the first part, also acquire, by purchase or otherwise, any property of the Erie Railway Company not embraced in the mortgage foreclosed which they may deem to be useful to the new corporation.

3. The said parties of the second part shall pay for the property, rights, and franchises so purchased, with the bonds and coupons of the parties of the first part, as far as may be, and such bonds and coupons will be placed at their disposition for that purpose in manner hereinafter specified.

4. For that part of the purchase money which may be payable in cash for the expenses provided for by paragraph 27 of this agreement, and for any sums necessary for the payment of any indebtedness of the receivership which it may be found necessary to discharge before a surrender of possession to the purchasers can be ordered by the court, or for any other necessary payment, the parties of the second part may and shall, on the request of the parties of the first part, make provision, by raising the required amounts and charging the
13 same upon the company to be created as hereinafter mentioned, and its property, as a charge thereon prior to any mortgage to be executed for the security of the bonds to be given for the bonds and coupons secured by the mortgage foreclosed, but subject to all antecedent liens not affected by the foreclosure; or the said parties of the first and second parts may use for such purpose any part of the funds contributed by holders of existing common and preferred stock; but if any such charge as authorized by this clause shall be created, provision shall be made, so far as practicable, for its being satisfied by the new company in such manner that no part thereof shall ultimately fall on the holders of its mortgage bonds.

5. The said parties of the second part, after they shall have purchased the said property, privileges, rights, and franchises, shall organize, under such name as they may select, a company or corporation, in conformity with this plan and the laws of the State of New York, in such case made and provided, with an amount of stock not exceeding the present amount of the stock of the Erie Railway Company, and shall cause the corporation so created to succeed to the title and possession of all and singular the property, rights, privileges, and franchises so purchased, subject to the obligations by this agreement created and imposed thereon or upon the said new corporation.

6. The said parties of the second part shall have and possess all the power and authority in the premises that may lawfully be conferred under the laws aforesaid upon agents or trustees for the purposes herein contemplated; and they are hereby empowered, in carrying into effect such purposes, to do all and everything that such agents or trustees are authorized by law to do in the premises, and their acts shall be binding on the new corporation, and the said new corporation shall have discretionary power to compromise, adjust, and settle, at any time, in such way, and on such terms as

may appear to be judicious, claims of or againt the existing Erie Railway Company, in all cases in which it may appear to the said corporation to be expedient to make such compromise, adjustment, and settlement.

14 7. The bonds and coupons of the parties of the first part shall be deposited in the city of New York, with or to the order of the parties of the second part, for the purpose of being used by them in carrying out this agreement. They shall be so deposited upon notice of their being required for the purposes of this agreement being given by the parties of the second part to the parties of the first part.

8. There are six mortgages upon the premises, or some of them, including the mortgage of September 1, 1870, known as the first consolidated mortgage, subject to which six mortgages the foreclosure contemplated by this agreement will be had. As the bonds secured by any of such six mortgages fall due, they may be extended without prejudice to the mortgage security, and new coupons issued. If that shall not be practicable or advisable, a new mortgage or new mortgages may be made of the same standing in point of lien, or as nearly so as lawfully may be, in order to raise money to pay such bonds as they fall due; and all other mortgages made in pursuance of this agreement shall be made subject to the right above reserved: Provided, always, that nothing in this agreement contained shall be construed to affect or impair the provisions of the first consolidated mortgage in regard to the bonds issued thereunder, and deposited with the Farmers' Loan and Trust Company for the purpose of being exchanged for prior lien bonds; but such provision shall be and remain operative, and in full force and effect, according to the true intent and meaning of the said mortgage.

9. As the consideration for the property, rights, and franchises so to be purchased, possessed and enjoyed as aforesaid, the corporation to be created by the parties of the second part shall, in addition to assuming and satisfying such obligations as may lawfully be imposed by the parties of the second part, in carrying the trusts and objects of this agreement into effect, and with all convenient speed, create and deliver the obligations and stock mentioned in paragraphs 10, 11, 12, 13, 14, and 15 hereof.

15 10. Funded coupon bonds, each for such amount as the parties of the first part may direct, to an amount in the aggregate equal to that of the coupons of the first consolidated mortgage bonds to be funded by the parties of the first part, namely, those due September 1, 1875; March 1, 1876; March 1, 1877; September 1, 1877; September 1, 1878; and September 1, 1879, together with interest on such coupons, at the rate of seven per cent. per annum, to the date of such funded coupon bonds, to be calculated on all the said coupons as from the 1st of September, 1877 (that being about the mean date), whatever their due date. These bonds shall be payable in London and New York, in gold, on the 1st day of September, 1920, and shall bear interest at the rate of seven per cent. per annum, payable in gold semi-annually in London and New York, to be represented by coupons attached to each bond;

and they shall be secured by a deposit with the Farmers' Loan and Trust Company of the funded coupons uncancelled; and the parties of the first part so funding coupons shall be entitled to receive therefor such funded coupon bonds. The so-called sterling loan bonds of the parties of the first part shall be regarded, for the purposes of this paragraph, as having been exchanged for first consolidated mortgage bonds on the 1st day of September, 1875, the coupon due on that day being funded at the rate of six per cent. per annum, as it in fact stood previous to such assumed exchange.

11. Mortgage bonds, to be delivered to the parties of the first part, to an amount equal to the amount of the principal of the second consolidated and gold convertible bonds, secured by the said mortgage of February 4, 1874, which may be held by the parties of the first part, or which (after having been held by them) may have been lost, stolen, or destroyed in transit from them to the parties of the second part, or otherwise. These bonds shall be for the sum of one thousand dollars gold, or two hundred pounds sterling each, or for such other amounts and denominations as the parties of the first part may direct, payable in gold coin in London and New York on the 1st day of December, 1969, with interest from the first day
16 of December, 1879, at six per cent., payable semi-annually in gold in London and New York, to be represented by coupons attached to each bond.

12. Funded coupon bonds, to be delivered to the parties of the first part (each for such amount as they may direct), equal in the aggregate to the amount of the interest coupons due on the bonds secured and held or lost, stolen or destroyed, as mentioned in the last preceding paragraph, up to and including the said 1st day of December, 1879, together with interest on such coupons, at the rate of seven per cent. per annum, to the date of the funded coupon bonds, to be calculated upon all the said coupons as from the 1st day of December, 1877 (that being about the mean date), whatever their due date; the said funded coupon bonds to bear interest at the rate of five per cent. per annum from the date of their issue to the 1st day of June, 1883, and thereafter at the rate of six per cent., but always payable semi-annually in London and New York in gold, and to be represented by coupons to be attached to each bond, and the principal of such coupon bonds shall be payable on the 1st day of December, 1969, in London and New York in gold.

13. Preferred stock, to an amount equal to the preferred stock of the Erie Railway Company now outstanding, to wit, eighty-five thousand three hundred and sixty-nine shares, of the nominal amount of one hundred dollars each, entitling the holders to non-cumulative dividends, at the rate of 6 per cent. per annum, in preference to the payment of any dividend on the common stock, but dependent on the profits of each particular year as declared by the board of directors.

14. Common stock, to an amount equal to the amount of the common stock of the said company now outstanding, to wit, seven hundred and eighty thousand shares of the nominal amount of one hundred dollars each.

15. The new company, at the request of the parties of the first part, shall, at the time of the creation of the mortgage and funded coupon bonds mentioned in paragraphs 11 and 12, create a
17 further amount of the same bonds, respectively, not exceeding that which would correspond to so many of the twenty-five million dollars' second consolidated and gold convertible bonds as are not referred to and comprised in the said paragraphs and the coupons thereon, and shall dispose of the same, or the proceeds thereof, as the parties of the first and second parts shall jointly direct.

16. The bonds stipulated for in paragraphs 11, 12, and 15 shall be secured, *pari passu*, by a mortgage embracing all and every part of the property, rights, privileges, and franchises of the said new company, as well acquired as to be acquired, but subject to all prior mortgages or liens.

17. The last-mentioned mortgage, and the bonds secured by it, shall contain a provision that in case any failure to pay interest on such bonds shall result from the want of net earnings applicable to such payment, the right of action consequent on such failure, whether at law upon the bonds or in equity for a foreclosure, shall be suspended until on each of six successive due dates of coupons some interest secured by the said mortgage shall be in default and unpaid; also, that under no circumstances shall a decree for foreclosure of the said mortgage be made unless the court shall be satisfied that the holders of at least one-half of the bonds secured by the said mortgage concur in or approve of the application for such decree. The said mortgage shall further contain provisions that in case the net earnings of the company, applicable for the purpose, shall be at any time insufficient to pay interest on the bonds secured thereby in full, as it matures, but sufficient to pay a part thereof, such part shall be paid *pro rata*, in such manner as may appear to the company to be most convenient and desirable; also, that in the event of any default in the payment of interest in full, then and thereafter during the continuance of such default a full and just account of the receipts, income, expenses, and net earnings of the company shall be open to the inspection of the trustee or trustees of the said mortgage at all reasonable times.

18. Preferred stock of the old company, in respect of which three dollars gold for each share has been or may be paid, and common stock of the old company, in respect of which six dol-
18 lars gold per share has been or may be paid, may be exchanged for the new stock, in paragraphs 13 and 14 mentioned, share per share, preferred for preferred, and common for common, without any liability to make any further payment in respect of such new stock: Provided, however, that such new stock, whether common or preferred, shall be issued and held in conformity with and subject to the trust for voting hereinafter mentioned.

19. In addition to the new common and preferred stock, the parties of the first part shall also receive for the amount of such payments, as mentioned in the last preceding paragraph, non-cumulative income bonds, without mortgage security, payable in gold, in

London and New York, on the 1st day of June, 1977, and bearing interest from December 1, 1879, also payable in gold, in London and New York, at the rate of six per cent. per annum, or at such lesser rate for any fiscal year as the net earnings of the company for that year, as declared by the board of directors, and applicable for the purpose, shall be sufficient to satisfy; these bonds to have yearly coupons attached.

20. Preferred stock, in respect to which two dollars gold per share has been or may be paid, and common stock, in respect of which four dollars gold has been or may be paid, may be exchanged share for share, but in conformity with and subject to the said trust for voting, for new stock of like class, without any liability to make any further payment in respect of such new stock; but no income bonds or other obligation or security shall be issued or delivered in respect of such reduced payments.

21. Payments in respect of old preferred or common stock, at the rates and on the terms hereinbefore specified, so far as not yet made, may be made to the Farmers' Loan and Trust Company of the city of New York, or to the parties of the first part, in London, by any holders of such stock, before the expiration of such time as may be lawfully limited by the parties either of the first or of the second part, but with interest on the sums so to be paid in each case, calculated
19 at the rate of seven per cent. per annum, from the first day of March, 1877, to the time of payment; and all payments made or to be made in respect of old, preferred, or common stock shall be deemed to be in consideration of the concessions and agreements made by the holders of the said first and second consolidated mortgage and gold convertible bonds, the available funds resulting from such concessions being used for the improvement or increase of the property of the new company.

22. The stock of the new company, both common and preferred, not required for exchange as above provided, may, with the consent of the parties of the first part, but not otherwise, be issued and disposed of by the company for its own benefit, at such rates and upon such terms as to the said company may seem proper. All moneys which have been or may hereafter be paid in respect of stock as above set forth, and which shall not be required for the purpose of carrying into execution this plan and agreement, shall be expended for the benefit of the said new company, or in the improvement or increase of its property, under the direction of the parties of the first part, and any balance not so expended shall be paid over to the said new company.

23. Vouchers exchangeable in suitable amounts for bonds to be issued under this agreement shall be given in all cases for fractions for which bonds cannot conveniently be given, and in all payments which, under this agreement, are to be made in New York and London in gold, 4s. sterling shall be taken as the equivalent of one dollar gold, except any payments under paragraphs 18, 20, and 21, which, when made in sterling, shall be reckoned at 4s. 1d. per dollar gold.

24. The parties of the second part shall cause the bonds and shares

created and issued under this agreement to be transmitted to the parties of the first part, in London, in such manner as the last-mentioned parties may direct; and upon the delivery of the same, pursuant to such direction, to the post-office, person, or corporation who may undertake the carriage thereof, the parties of the
20 second part shall thereafter be freed and discharged of and from all liability in respect of the same.

25. The parties of the first and second parts, under advice of counsel, shall create a trust for placing in trustees, to be named by the parties of the first part, the power of voting in respect of one-half the common and preferred stock of the corporation to be created under this agreement and issued for the time being, the provisions of which trust shall be inserted in the certificate or articles of incorporation of the company, and constitute part thereof. Such trust shall continue until the full dividend has been paid on the preferred stock for three consecutive years, and in order the more effectually to secure such voting power to the said voting trustees said half of the said common and preferred stock respectively shall be actually vested in and held by them. And they shall from time to time issue to the persons entitled to the stock subjected to such trusts certificates representing the stock to which such persons respectively may be so entitled, and such certificates may be in such form as to permit of the same, together with the equitable right to the shares represented thereby, being transferred by delivery of such certificates, or in such form as to permit of the same certificates and equitable right being transferred in the same way as ordinary shares in the company, or in any other form which the voting trustees and the parties hereto of the first part may approve. And the voting trustees shall, so far as practicable, having regard to the form of certificate issued, keep in London and New York a register of the transfers and holders of such certificates, and the expenses of conducting such voting trust, including the remuneration of the voting trustees, shall be borne and paid by the company. The certificate, or articles of incorporation, shall also contain proper provisions for voting on the part of the holders of bonds of the new corporation, and holders of the said first consolidated sterling loan and other mortgage bonds of the Erie Railway Company.

26. The several persons, parties to this agreement, shall be liable only for gross negligence or wil-full default, and shall, under
21 no circumstances, be liable, except each for his own personal acts. If a vacancy shall occur, for any cause whatever, in the body constituting the party of the first part, the persons remaining may fill the vacancy. If such vacancy shall occur in the body constituting the party of the second part, the person or persons remaining may fill the vacancy, with the concurrence of the parties of the first part, but shall not be obliged to do so while two remain to execute the trust. In both cases those who may be appointed successors, and shall accept the appointment, shall immediately and without further act succeed to all the rights and duties of the person or persons whom they succeed; and the parties, either of the first or of the second part, may, in all cases, act by a majority of their

respective number, whether such parties be acting hereunder alone or in conjunction with the parties of the other part. And this agreement may be executed by a majority of the parties of the first part on behalf of themselves and the others of them.

27. The expenses (including all proper compensation for services or otherwise) of or incident to the carrying out of this agreement. and the negotiations and arrangements preliminary thereto, shall be assessed and determined by the parties of the first part, whose decision thereon shall be final, except as to the remuneration to be paid to the parties of the second part, called the purchasing committee, which shall be settled between themselves and the parties of the first part, and except also as to the remuneration to be paid to the committee who prepared the scheme of reconstruction on which this plan is found, and to the parties of the first part, called the reconstruction trustees, which shall be fixed by a meeting in London of the holders of, or persons entitled to, the stock and bonds of the Erie Railway Company affected by this scheme, or the stock and bonds to be issued hereunder in lieu thereof respectively, to be convened and held as nearly as possible in the same manner as the meetings by which such committee and trustees were respectively appointed, or by any committee or delegation appointed by such meeting.

28. Nothing herein contained shall be, or be construed to be, any limitation on the right or authority of the parties of the second part to discharge their duty as purchasing trustees or committee, or as the persons organizing the new company in the manner and for the purposes contemplated by the acts hereinbefore referred to.

22

Dated 14th day of December, 1877.

E. W. WATKIN.
BENJ'N WHITWORTH.
JOHN WESTLAKE.
O. G. MILLER.
PETER McLAGAN.
HENRY RAWSON.
T. W. POWELL.
JOHN K. CROSS.
EDWIN D. MORGAN.
JOHN LOWBER WELSH.
DAVID A. WELLS.

In witness whereof we, the undersigned, being the said purchasing trustee- and their associates, have hereunto severally subscribed our names and affixed our seals, at the city of New York, this twenty-sixth day of April, A. D. eighteen hundred and seventy-eight.

E. D. MORGAN. [SEAL.]
JNO. LOWBER WELSH. [SEAL.]
DAVID A. WELLS. [SEAL.]
H. J. JEWETT. [SEAL.]
SOLOMON S. GUTHRIE. [SEAL.]

R. SUYDAM GRANT. [SEAL.]
GEO. F. TALMAN. [SEAL.]
JOHN TAYLOR JOHNSTON. [SEAL.]
CORTLANDT PARKER. [SEAL.]
T. R. BUTLER. [SEAL.]
J. FRED. PIERSON. [SEAL.]
HOMER RAMSDELL. [SEAL.]
JAMES J. GOODWIN. [SEAL.]
WM. WALTER PHELPS. [SEAL.]
SAM. SLOAN. [SEAL.]
HENRY G. STEBBINS. [SEAL.]
CHARLES DANA. [ ]

In presence of—
H. S. ANDERSON.
JAMES E. BEDELL.

23 STATE OF NEW YORK, } ss:
City and County of New York, }

On this 26th day of April, 1878, before me personally appeared Edwin D. Morgan, John Lowber Welsh, David A. Wells, Hugh J. Jewett, Solomon S. Guthrie, R. Suydam Grant, Geo. F. Talman, John Taylor Johnston, Cortlandt Parker, Theron R. Butler, J. Fred. Pierson, Homer Ramsdell, James J. Goodwin, William Walter Phelps, Samuel Sloan, Henry G. Stebbins, and Charles Dana, to me known to be the persons described in and who executed the foregoing certificate, and severally to me acknowledged that they executed the same.

JAMES E. BEDELL,
Notary Public, Kings County.

(Certificate filed in the city and county of New York.)

(Endorsed:) U. S. circuit court, southern district of New York. Tom Nickals & *al. vs.* The New York, Lake Erie and Western R. R. Co. *et al.*. Bill of complaint. Tracy, Olmstead & Tracy, solicitors for plaintiffs, 50 Wall St., N. Y. U. S. circuit court. Filed Jan. 12, 1882. Joseph M. Deuel, clerk.

24 OFFICE OF SHIPMAN, BARLOW, LAROCQUE & CHOATE,
No. 35 WILLIAM ST., NEW YORK, *Jan. 25th*, 1882.

Wm. D. Shipman, S. L. M. Barlow, Jos. Larocque,
Wm. G. Choate, Sol. Hanford,

To Joseph Deuel, Esq.,
Clerk U. S. circuit court, southern district of N. Y.

DEAR SIR: Tom Nickals *v.* The New York, L. E. & W. R. R. Co. & ors.

Please enter our appearance as solicitors for all defendants in this suit, and oblige

Yours truly,
(S'g'd) SHIPMAN, BARLOW, LAROCQUE & CHOATE.

(Endorsed:) U. S. circuit court, southern dist. of N. Y.
25 Tom Nickals *vs.* The New York, L. E. & W. R. R. Co. Appearance. Shipman, Barlow, Larocque & Choate. U. S. circuit court. Filed Jan. 25, 1882. Joseph M. Deuel, clerk.

26 *The Answer of the New York, Lake Erie and Western Railroad Company, one of the Defendants to the Bill of Complaint of Tom. Nickals and Sydney Claris, Plaintiffs.*

U. S. Circuit Court, Southern District of New York.

TOM. NICKALS *et al.*
vs.
THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY, Impleaded with Theron R. Butler *et al.*

To the judges of the circuit court of the United States for the southern district of New York:

This defendant, now and at all times hereafter saving to itself all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith:

This defendant admits, on information and belief, that one
27 thousand six hundred and ninety shares, called "voting" shares, and the same number of shares called "non-voting" shares, of the said preferred capital stock of said New York, Lake Erie and Western Railroad Company, mentioned in the bill of complaint, stand registered in the name of Tom. Nickals & Co., as holders thereof; but whether the plaintiffs, at the time of the commencement of this suit, were or now are the owners or holders thereof, or of any part thereof, or of any of the shares alleged in the said bill of complaint, this defendant has no knowledge and no information in respect thereto, except from the allegations of said bill, and it therefore denies all the allegations of the bill in that behalf.

This defendant admits that the said The New York, Lake Erie and Western Railroad Company is a corporation organized under and pursuant to a certain statute of the State of New York, entitled "An act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11th, 1874, and the act amending the same, passed June 2d, 1876, and that said corporation was organized by means of articles of association filed and recorded in pursuance of said statutes. This defendant admits that said articles of association contained a certain plan and agreement, which was incorporated in and made part of said articles, and that the copy annexed to said bill of complaint, and purporting to be a copy of said articles, together with a copy of said plan and agreement incorporated therein, is a true copy of said articles and of said plan and agreement.

This defendant admits that during the year ending the 30th of September, 1880, the said company used and operated the railroad

and property in said articles mentioned, and that during said year the gross earnings thereof, and the operating expenses, and the earnings from other sources than transportation, and the interest on the funded debt of said company, rentals of its leased lines
28 and other charges, amounted to the respective sums in that behalf mentioned in said bill of complaint.

And this defendant, further answering, says that the condition of the defendant company touching the earnings from traffic and other sources, and the deductions therefrom for interest on funded debt, rentals of leased lines, and other charges, as set forth in the annual report of the board of directors for the year ending September 30th, 1880 (at pp. 3 and 4), of which report a copy is hereto annexed, marked "Schedule A," is correctly stated, but this defendant avers that the balance, $1,790,620.71, was simply a profit only upon the traffic operations for the year after the above-named deductions, and was so stated, not as the basis of a dividend on the preferred or common stock of the company, nor as a declaration of profits on the whole transactions of the company for the year, but merely to show the results of the traffic as they appeared on the books of the company; and this defendant further avers that prior to and during the year ending September 30, 1880, the defendant company, under the direction of the board of directors, had expended and become liable for, in the improvements mentioned on page 4 of said printed report, more than the said sum of $1,790,620.71, which expenditure was necessary and proper in order to improve the condition of the property by facilitating the rapid and economical handling of freight, and enabling the company to compete under more equal conditions with rival and competing lines; and the defendant further avers that these very expenditures had enabled the company to increase its business for that year and conduct it at less cost, whereby it was alone able to increase its surplus revenues from traffic merely to the extent of said $1,790,620.71.

And this defendant further avers that said expenditures and liabilities were incurred by the exigencies of the business of the defendant company, and were made and incurred in a wise,
29 proper, and economical administration of its affairs for the best interests of its property, creditors, and preferred stockholders, in strict pursuance of the plan of reorganization and the charter of the company in the premises, and of the authority and discretion by law pertaining to the board of directors in administering its affairs, and that said sum of $1,790,620.71 was all absorbed in providing for the payment for said expenditures and the discharge of the obligations of said company incurred therefor.

And this defendant denies that, except as hereinbefore stated, there were any net profits arising from the business of this company for the year ending September 30th, 1880.

This defendant denies that, in and by said report, the amount of said preferred stock is stated in one instance as $8,156,725 and in another instance as $7,367,700. This defendant admits, however, that payment of a six per cent. dividend on the larger of said sums would require $489,403.50; but it denies that said last-named sum

is less than the net profits of said year, as alleged in said bill of complaint.

This defendant denies that, in and by their said report, the board of directors of said company have declared that there were profits arising from the use and operation of the property of said company during said year out of which any dividend upon said preferred stock could or should have been paid, and it denies that any such dividend was agreed to be paid, and it denies that the board of directors of said company have appropriated any such profits to the purposes in their said report stated, contrary to the intention of the parties entering into said plan and agreement, or the stipulated rights of the holders of said preferred stock, as to the dividends to be paid thereon, or as to the termination of the voting trust or other rights defined in said plan and agreement.

30 This defendant admits that the defendants, Butler, Dana, Dickson, Durkee, Grant, Guthrie, Jewett, Johnston, Morgan, Ramsdell, Strong, Parker, and Welsh, together with Henry G. Stebbins, since deceased, James J. Goodwin, John Frederick Pierson, and James R. Keene, constituted the said board of directors at the time of making the report referred to in said bill of complaint, and that said defendants now are directors of said company, but that said Goodwin, Pierson, and Keene are no longer such directors.

And this defendant, further answering, upon information and belief alleges that the plaintiffs were not holders or owners of any of the shares of said preferred stock in said company during the year ending on the 30th day of September, 1880, or during any part thereof, and that during no part of said year were any of said shares transferred to or standing in the names of said plaintiffs on the books of said company.

And this defendant, further answering, alleges that in and by said plan and agreement, and according to the purpose and intention of the parties thereto, the holders of the shares of said preferred stock were not to be entitled to any dividend thereon unless and until the said board of directors should, in the exercise of their lawful power, authority, and discretion in that behalf, declare a dividend thereon; that the said board of directors, in the due exercise of their said authority, and having due regard to the interests of all parties for whose benefit they were appointed to act as such directors, and acting therein in entire good faith, did not and have not declared a dividend upon said shares for said year.

This defendant admits that it has, and said board of directors have been requested to pay a dividend upon said preferred stock, and that it and they have refused to pay the same.

31 Where this defendant prays that it may be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY, [SEAL.]

By A. R. MACDONOUGH, *Secretary.*

SHIPMAN, BARLOW, LAROCQUE & CHOATE,

Solicitors for Defendant Company, No. 35 William St., New York.

WILLIAM G. CHOATE, *of Counsel.*

(Endorsed:) U. S. circuit court, southern district of N. Y. Tom Nickals *et al. vs.* The New York, Lake Erie & Western R. R. Co., impl'd, &c. Answer of defendant company. Shipman, Barlow, Larocque & Choate, sol'rs for the company, 35 William St., N. Y. city. U. S. circuit court. Filed Mar. 27, 1882. Joseph M. Deuel, clerk.

U. S. Circuit Court, Southern District of New York.

TOM NICKALS *et al.*
vs.
THERON R. BUTLER, CHARLES DANA, THOMAS DICKSON, HARRISON Durkee, R. Suydam Grant, Solomon S. Guthrie, Hugh J. Jewett, John Taylor Johnston, Edwin D. Morgan, Homer Ramsdell, William L. Strong, Cortland Parker, and J. Lowber Welsh,, impleaded with The New York, Lake Erie and Western Railroad Company.

To the judges of the circuit court of the United States for the southern district of New York:

The joint and several answer of Theron R. Butler, Charles
32 Dana, Thomas Dickson, Harrison Durkee, R. Suydam, Grant, Solomon S. Guthrie, Hugh J. Jewett, John Taylor Johnston, Edwin D. Morgan, Homer Ramsdell, William L. Strong, Cortlandt Parker, and J. Lowber Welsh, defendants to the bill of complaint of Tom Nickals and Sydney Claris, plaintiffs:

These defendants, now and at all times hereafter saving to themselves all and all manner of benefit and advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering each for himself, saith:

These defendants admit, on information and belief, that one thousand six hundred and ninety shares, called "voting" shares, and the same number of shares called "non-voting" shares of said preferred capital stock of said New York, Lake Erie and Western Railroad Company, mentioned in the bill of complaint, stand registered in the name of Tom Nickals & Co., as holders thereof, but whether the plaintiffs, at the time of the commencement of this suit, were or now are the owners or holders thereof, or of any part thereof, or of any of the shares alleged in the said bill of complaint, these defendants have no knowledge and no information in respect thereto, except from the allegations of said bill, and they therefore deny all the allegations of the bill in that behalf.

These defendants admit that the said, The New York, Lake Erie and Western Railroad Company, is a corporation, organized under and pursuant to a certain statute of the State of New York, entitled "An act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in such cases," passed May 11th, 1874, and the act amending the same, passed June 2d, 1876, and that said corporation was organized by

means of articles of association filed and recorded in pursuance of said statutes.

33 These defendants admit that said articles of association contained a certain plan and agreement, which was incorporated in and made part of said articles, and that the copy annexed to said bill of complaint, and purporting to be a copy of said articles, together with a copy of said plan and agreement incorporated therein, is a true copy of said articles and of said plan and agreement.

These defendants admit that during the year ending the 30th of September, 1880, the said company used and operated the railroad and property in said articles mentioned, and that during said year the gross earnings thereof, and the operating expenses, and the earnings from other sources than transportation, and the interest on the funded debt of said company, rentals of its leased lines and other charges, amounted to the respective sums in that behalf mentioned in said bill of complaint.

And these defendants, further answering, say that the condition of the defendant company, touching the earnings from traffic and other sources, and the deductions therefrom for interest on funded debt, rentals of leased lines and other charges, as set forth in the annual report of the board of directors for the year ending September 30, 1880, (at pp. 3 and 4,) of which report a copy is hereto annexed, marked Schedule "A," is correctly stated, but these defendants aver that the balance, $1,790,620.71, was simply a profit only upon the traffic operations for the year after the above-named deductions, and was so stated, not as the basis of a dividend on the preferred or common stock of the company, nor as a declaration of profits on the whole transactions of the company for the year, but merely to show the results of the traffic as they appeared on the books of the company; and these defendants further aver that prior to and during the year ending September 30, 1880, the defendant company, under the direction of the board of directors, had expended and become liable for, in the improvements men-

34 tioned on page 4 of said printed report, more than the said sum of $1,790,620.71, which expenditure was necessary and proper in order to improve the condition of the property by facilitating the rapid and economical handling of freight and enabling the company to compete under more equal conditions with rival and competing lines.

And these defendants further aver that these very expenditures had enabled the company to increase its business for that year and conduct it at less cost, whereby it was alone able to increase its surplus revenues from traffic merely to the extent of said $1,790,620.71.

And these defendants further aver that said expenditures and liabilities were incurred by the exigencies of the business of the defendant company, and were made and incurred in a wise, proper, and economical administration of its affairs, for the best interest of its property, creditors, and preferred stockholders, in strict pursuance of the plan of reorganization and the charter of the company in the premises, and of the authority and discretion by law pertaining

to the board of directors in administering its affairs; and that said sum of $1,790,620.71 was all absorbed in providing for the payment for said expenditures and the discharge of the obligations of said company incurred therefor.

And these defendants deny that except as hereinbefore stated there were any net profits arising from the business of the said company for the year ending September 30, 1880.

These defendants deny that in and by said report the amount of said preferred stock is stated in one instance as $8,156,725, and in another instance as $7,367,700. These defendants admit, however, that payment of a six per cent. dividend on the larger of said sums would require $489,403.50; but they deny that said last-named sum is less than the net profits of said year, as alleged in said bill of complaint.

These defendants deny that in and by their said report the
35 board of directors of said company have declared that there were profits arising from the use and operation of the property of said company during said year out of which any dividend upon said preferred stock could or should have been paid, and they deny that any such dividend was agreed to be paid; and they deny that the board of directors of said company have appropriated any such profits to the purposes in their said report stated contrary to the intention of the parties entering into said plan and agreement or the stipulated rights of the holders of said preferred stock as to the dividends to be paid thereon or as to the termination of the voting trust or other rights defined in said plan and agreement.

These defendants admit that the defendants, Butler, Dana, Dickson, Durkee, Grant, Guthrie, Jewett, Johnson, Morgan, Ramsdell, Strong, Parker, and Welsh, together with Henry G. Stebbins, since deceased, James J. Goodwin, John Frederick Pierson, and James R. Keene, constituted the said board of directors at the time of making the report referred to in said bill of complaint, and that said defendants now are directors of said company, but that said Goodwin, Pierson, and Keene are no longer such directors.

And these defendants, further answering, allege, upon their information and belief, that the plaintiffs were not holders or owners of any of the shares of said preferred stock in said company during the year ending on the 30th day of September, 1880, or during any part thereof, and that during no part of said year were any of said shares transferred to or standing in the names of said plaintiffs on the books of said company.

And these defendants, further answering, allege that in and by said plan and agreement and according to the purpose and intention of the parties thereto the holders of the shares of said preferred stock were not to be entitled to any dividend thereon unless
36 and until the said board of directors should, in the exercise of their lawful power, authority, and discretion in that behalf, declare a dividend thereon; that the said board of directors, in the due exercise of their said authority, and having due regard to the interests of all parties for whose benefit they were appointed to act

as such directors, and acting therein in entire good faith, did not and have not declared a dividend upon said shares for said year.

These defendants admit that said defendant corporation has, and said board of directors have been, requested to pay a dividend upon said preferred stock, and that it and they have refused to pay the same.

And for answer to the several interrogatories contained in the bill of complaint the defendants, each answering for himself according to the best and utmost of his knowledge, information, and belief, say:

I. That the corporation, The New York, Lake Erie and Western Railroad Company, was organized by means of articles of association filed and recorded in pursuance of the statutes of the State of New York, mentioned in said bill.

II. That said articles of association were adopted in pursuance of a plan and agreement for reorganization, and that said plan and agreement was incorporated in and made part of said articles of association.

III. That said articles of association and plan and agreement contained the provisions expressed in the copy thereof annexed to the said bill.

IV. That some of the preferred stock contemplated in said articles of association and plan and agreement had been issued at the close of the year ending 30th September, 1880, and that 73,677 shares of said preferred stock had at that time been so issued.

37 V. That there were profits of the use and operation of said railroad and other property of said company during said year to the amount of $1,790,620.71, exclusive of the expenditures during said year for the building of double track, erection of buildings, providing additional equipment, acquiring and constructing docks at Buffalo and Jersey City, and the addition of other improvements to the road and property, which expenditures, being the same hereinbefore in the 11th folio of this answer referred to, were incurred in the manner and under the circumstances hereinbefore in this answer stated, and that, including said expenditures in computing the profits of the use and operation of the said railroad and other property of said company, there were no profits thereof during said year.

VI. That at the close of the year ending 30th September, 1880, the board of directors of said company did not declare that there were profits from the operation of the year, except as appears in and by the said report marked Schedule "A."

Wherefore these defendants pray that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(S'g'd) H. J. JEWETT.
" H. DURKEE.
" CHARLES DANA.
" R. S. GRANT.
" E. D. MORGAN.
" CORTLANDT PARKER.

SHIPMAN, BARLOW, LAROCQUE & CHOATE,
Sols. for said Def'ts.

No. 35 William St., New York.

WILLIAM G. CHOATE,
Of Counsel.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

38–9 On this 2d day of June, 1882, before me personally appeared Hugh J. Jewett, Harrison Durkee, Charles Dana, and Richard Suydam Grant, who, being by me duly sworn, did depose and say that they have read the foregoing answer, and that the same is true to their own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true.

P. T. BARLOW,
Notary Public, New York City and County.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 5th day of June, 1882, before me personally appeared Edwin D. Morgan, who, being by me duly sworn, did depose and say: That he has read the foregoing answer, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

P. T. BARLOW,
Notary Public, New York City and County.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 8th day of June, 1882, before me personally appeared Cortlandt Parker, who, being by me duly sworn, did depose and say: That he has read the foregoing answer, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

P. T. BARLOW,
Notary Public, New York City and County.

(Endorsed:) U. S. circuit court, southern district of New York. Tom Nickals & *al. vs.* The New York, Lake Erie and Western R. R. Co. impl'd. Answer of def'ts, Butler & *als.* U. S. circuit court. Filed June 9, 1882. Joseph M. Deuel, clerk.

40 U. S. Circuit Court, Southern District of New York.

TOM NICKALS and SIDNEY CLARIS
vs.
THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY *et al.*

The replication of the plaintiffs to the separate answer of the New York, Lake Erie and Western Railroad Company to the bill of complaint of the above plaintiffs.

The plaintiffs, saving and reserving to themselves all and all

manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say: That they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by
41 the plaintiffs; without this that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things the plaintiffs are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(S'g'd) TRACY, OLMSTEAD & TRACY,
Solicitor- for Plaintiffs, 50 Wall St., N.Y.
(S'g'd) CHARLES TRACY, *Of Counsel.*

(Endorsed:) U. S. circuit court, southern dist. of New York. Tom Nickals and Sidney Claris *vs.* The New York, Lake Erie and
42 Western Railroad Company *et al.* Replication. Tracy, Olmstead & Tracy, sol'rs for compl'ts, 50 Wall St., N.Y. U. S. circuit court. Filed Apr. 6, 1882. Joseph M. Deuel, clerk.

43 U. S. Circuit Court, Southern District of New York.

TOM NICKALS and SIDNEY CLARIS
vs.
THE NEW YORK, LAKE ERIE AND WESTERN RAILROAD COMPANY *et al.*

The replication of the plaintiffs to the joint and several answer of the defendants, Hugh J. Jewett, Harrison Durkee, Charles Dana, R. Suydam Grant, Edwin D. Morgan, and Cortlandt Parker, to the bill of complaint of the above plaintiffs.

The plaintiffs, saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say: That they will aver and prove their said bill be true, certain, and sufficient in the law to be answered unto; and that the said answer of the
44 said defendants is uncertain, untrue, and insufficient to be replied unto by the plaintiffs; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law, to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things the plaintiffs are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

(S'g'd) TRACY, OLMSTEAD & TRACY,
Solicitors for Plaintiffs, 50 Wall St., N. Y.
(S'g'd) C. E. TRACY, *Of Counsel.*

(Endorsed:) U. S. circuit court, southern dist. of N. Y. Tom Nickals and ano. *vs.* The New York, Lake Erie & Western
45 Railroad Company *et al.* Replication to answer of Hugh J. Jewett *et al.* Tracy, Olmstead & Tracy, pl'ffs' sol'rs, 50 Wall St., N. Y. U. S. circuit court. Filed June 19, 1882. Joseph M. Deuel, clerk.

46 United States Circuit Court, Southern District of New York.

TOM NICKALS and SIDNEY CLARIS
vs.
THE NEW YORK, LAKE ERIE and WESTERN RAILROAD COMPANY *et al.*

Testimony taken on the part of the complainant under and pursuant to the 67th Rule of the Supreme Court of the United States, as amended, before John A. Shields, Esq., a standing examiner of said Court.

NEW YORK, *June* 27, 1882.

Present: C. E. Tracy, Esq., of counsel for complainants, and W. G. Choate, Esq., of counsel for defendants.

Mr. A. RODNEY MACDONOUGH, a witness produced on the part of the complainants, being duly sworn.

By consent the examination is adjourned to 2 p. m.

47 Q. 1. Are you the transfer agent of the New York, Lake Erie and Western Railroad Company?

A. I am.

Q. 2. Are you also its secretary?

A. I am.

Q. 3. As such officer of that company, are you in possession of that company's stock and transfer books?

A. I am.

Q. 4. Do those books contain entries of any preferred stock of that company, either voting or non-voting, standing in the name of the plaintiffs, as Tom Nickals & Co.?

A. They do contain entries of stock of both kinds standing in plaintiffs' name.

Q. 5. Have you examined those books since a subpœna was served upon you?

A. I have examined them personally.

Q. 6. Have you made transcripts of the entries upon those books relating to stock standing in plaintiffs' name; and, if so, please produce them?

A. I have caused transcripts to be made which I have compared with the original and found to be correct, which transcripts are here produced of page 295 in the ledger of voting stock, and of page 296 in the ledger of non-voting stock, which show the account of Tom Nickals & Co., and are the only pages relating to their account in said ledgers.

Q. 7. Do the dates and names appearing in this statement that you have produced indicate the time of transfer into the plaintiffs' name and the persons from whose name the stock was so transferred and the amounts?

A. The first two lines in each of these copied papers indicate the dates and amounts of transfers of stock to the plaintiffs and the names of persons so transferring; the remainder of the lines in each

copied page indicate the dates and number of shares transferred by the plaintiffs to other persons and the names of the transferees; the third column, headed "balance" in said copies, show- the number of shares held at the respective dates given standing in the name of the plaintiffs.

48 This paper is offered in evidence and marked Plaintiffs' Exhibit S., A. J. A., Exr., June 27, 1882, and annexed to this deposition.

Cross-examined by WM. G. CHOATE, Esq.:

Cross-Q. 8. Have you with you transcripts of the transfer book showing the transfer to the plaintiffs of the 1,670 shares of voting stock, and also the 1,670 shares of non-voting stock, which were transferred on the books to the name of the plaintiffs on the 30th day of November, 1881, and also of the 20 additional shares of both kinds transferred on the books to their names on the 17th day of December, 1881? If so, please produce the same.

A. I have, and produce such transcripts.

Cross-Q. 9. Are these papers, produced in answer to the last question, full copies of the original transfer on file in your office?

A. They are full and exact copies of the transfer books.

Said papers are marked Def'ts' Exh. 1, containing 19 papers, J. A. S., Ex'r, June 27, 1882, and Def'ts' Exh. 2, containing 22 papers, J. A. S., Ex'r, June 27, 1882.

Cross-Q. 10. Prior to the 30th day of November, 1881, was there any preferred stock standing in the name of the plaintiffs, Tom. Nickals & Co., on the stock books of the defendant?

A. There was none.

AUGUSTUS R. MACDONOUGH.

Sworn before me.

JOHN A. SHIELDS,
Examiner, &c.

Plaintiffs declare their testimony closed.

49 PL'FFS' EXH. A.—*J. A. S., Exr., June* 27, 1882. *Tom. Nickals & Co.*

Date.	Voting.	Dr.	Cr.	Balance.
1881.				
Nov. 30	By R. Raphael & Sons and others	----	1670	1670
Dec. 17	" L. H. Niles and others	----	20	1690
1882.				
Feb'y 16	To E. C. Stedman & Co.	50	------	1640
Mar. 2	" U. Palmedo	30	------	1610
" 27	" Blake Brothers & Co.	30	------	1580
Apr. 10	" Maurice Makower	10	------	1570
" 13	" James Reis	40	------	1530
" 15	" R. & I. Dick	20	------	1510
June 15	" Blake Bros. & Co.	10	------	1500
" 13	" Henry Jump	10	------	1490
	Non-Voting.			
1881.				
Nov. 30	By David Forsyth and others	----	1670	1670
Dec. 17	" Thomas Letchworth	----	20	1690
1882.				
Feb'y 15	To U. Palmedo	10	------	1680
" 16	" E. C. Stedman & Co.	50	------	1630
Mar. 2	" U. Palmedo	30	------	1600
" 28	" Blake Bros. & Co.	30	------	1570
Apr. 15	" R. & I. Dick	20	------	1550
June 5	" Blake Bros. & Co.	10	------	1540
	20–6–82. E. J. X.			

50 DEF'TS EXH. 1.—*Containing* 19 *Papers—J. A. S., Ex'r, June* 27, 1882.

1.

	Dr. Fol.	Cr. Fol.	
3122–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) DAVID FORSYTH. EDW'D J. RANDALL, *Att'y.* 10 shares.

2.

3245–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) MARY WYLEY. EDW'D J. RANDALL, *Att'y.* 10 shares.

3.

3082–3–20			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in twenty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) WM. WALKER (LEEDS). EDW'D J. RANDALL, *Att'y.* 20 shares.

51

4.

	Dr. Fol.	Cr. Fol.	
3173–4–20			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in twenty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) JNO. WALKER. EDW'D J. RANDALL, *Att'y.* 20 shares.

5.

976–5			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in five shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) JAMES M. MOORE, M. D. EDW'D J. RANDALL, *Att'y.* 5 shares.

6.

1346–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) ROBINS, POWELL & CO. EDW'D J. RANDALL, *Att'y.* 10 shares.

52 **7.**

	Dr. Fol.	Cr. Fol.	
2464–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) I. VALENTINE. EDW'D J. RANDALL, *Att'y.* 10 shares.

8.

2222–4–30			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in thirty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) PLOCK & CO. EDW'D J. RANDALL, *Att'y.* 30 shares.

9.

464–10 1911–10 1914–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in thirty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) SCHWABE & RANSFORD. EDW'D J. RANDALL, *Att'y.* 30 shares.

53 **10.**

	Dr. Fol.	Cr. Fol.	
2134–5–20 2137–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in thirty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) JNO. TAYLOR & CO. EDW'D J. RANDALL, *Att'y.* 30 shares.

11.

1948–10 1970–2–30			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in forty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) JAMES D. HEDDERWICK. EDW'D J. RANDALL, *Att'y.* 40 shares.

12.

864–5 260–10 701–10 3314–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in thirty-five shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) R. RAPHAEL & SONS. EDW'D J. RANDALL, *Att'y.* 35 shares.

54 **13.**

	Dr. Fol.	Cr. Fol.	
2585–7–30 2611–10 3289–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in fifty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) L. H. NILES. EDW'D J. RANDALL, *Att'y.* 50 shares.

14.

3439–43–50			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in fifty shares of the preferred capital stock of the New York, Lake Erie, & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) WM. HEATH & CO. EDWD. J. RANDALL, *A'tty.* 50 shares.

15.

2175–82–80			For value received, the undersigned assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in eighty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) XENOPHON BALLI & SON. EDW'D J. RANDALL, *Att'y.* 80 shares.

55

16.

	Dr. Fol.	Cr. Fol.	
2892–4–30 3017–9–30 3022–10 3081–5–50 3096–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in one hundred & thirty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) WM. ALEX. SMITH & CO. EDW'D J. RANDALL, *Att'y.* 130 shares.

17.

395–10
2259–10
2269–10
2284–10
2323–10
2439–40–10
2444–6–30
2452–2–20
2473–6–40
2491–10
2507–9–30
2525–10
2707–10–40
2712–16–50
2727–10
3180–10
3198–202–50
3205–7–30

For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in four hundred shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin.

Dated New York, the 30th day of Nov., 1881.

(S'd) I. S. WORMSER.

EDW'D J. RANDALL, *Att'y.*

400 shares.

18.

2803–6–40
2810–10
2812–6–50
2819–10
2822–6–50
2831–40–100
2928–9–20
2941–10
2960–71–120
3227–30–40
3240–10
3245–7–30
3251–5–50
3417–33–170

For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in seven hundred & ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin.

Dated New York, the 30th day of Nov., 1881.

(S'd) KUHN, LOEB & CO.

EDW'D J. RANDALL, *Att'y.*

710 shares.

56

19.

2150–1–20

For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, the beneficial interest in twenty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin.

Dated New York, the 17th day of Dec., 1881.

(S'd) THOMAS LITCHWORTH.

EDWD. J. RANDALL, *Att'y.*

20 shares.

DEF'TS' EXH. 2.—*Containing 22 papers—J. A. S., Ex'r June 27, 1882.*

1.

	Dr. Fol.	Cr. Fol.	
1294–5			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in five shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) JAMES M. MOORE, M. D. EDWD. J. RANDALL, *Att'y.* 5 shares.

57

2.

2464–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) R. RAPHAEL & SONS. EDWD. J. RANDALL, *Att'y.* 10 shares.

3.

259–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Comprny, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) J. ALBERT SLATER. EDWD. J. RANDALL, *Att'y.* 10 shares.

4.

	Dr. Fol.	Cr. Fol.	
2109–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) SELIGMAN BROS. EDWD. J. RANDALL, *Att'y.* 10 shares.

58

5.

2494–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) JNO. TAYLOR & CO. EDWD. J. RANDALL, *Att'y.* 10 shares.

6.

2990–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) MARY WYLEY. EDWD. J. RANDALL, *Att'y.* 10 shares.

7.

307–8–20	Dr. Fol.	Cr. Fol.	For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in twenty shares of the preferred capital stock of the New York, Lake Erie and Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) JNO. WALKER. EDWD. J. RANDALL, *Att'y.* 20 shares.

59

8.

194–10 194–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in twenty shares of the preferred capital stock of the New York, Lake Erie and Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) A. S. McPHERSON. EDWD. J. RANDALL, *Att'y.* 26 shares.

9.

819–5 232–10	Dr. Fol.	Cr. Fol.	For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in fifteen shares of the preferred capital stock of the New York, Lake Erie and Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York the 30 day of Nov., 1881. (S'd) DAVID FORSYTH. EDWD. J. RANDALL, *Att'y.* 15 shares.

10.

2315–16–20			For value received, the undersigned hereby assign and transfer unto Tom Nickall & Co., London, all right, title, and interest in twenty shares of the preferred capital stock of the New York, Lake Erie and Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) JAMES D. HEDDERWICK. EDWD. J. RANDALL, *Att'y.* 20 shares.

60 **11.**

2616–8–30			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in thirty shares of the preferred capital stock of the New York, Lake Erie and Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) BLOCK & CO. EDW'D J. RANDALL, *Att'y.* 30 shares.

12.

190–2–30			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in thirty shares of the preferred capital stock of the New York, Lake Erie and Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) WILL'M WALKER. EDW'D J. RANDALL, *Att'y.* 30 shares.

13.

2531–3–30	Dr. Fol.	Cr. Fol.	For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in thirty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) THOS. LETCHWORTH. EDW. J. RANDALL, *Att'y.* 30 shares.

61

14.

2980–120 3000– 10 3500– 10 3681– 10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in fifty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) L. H. NILES. EDW. J. RANDALL, *Att'y.* 50 shares.

15.

510–10 513–10 1230–10 1289–10 1684–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in fifty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) SPEYER BROS. EDW. J. RANDALL, *Att'y.* 50 shares.

16.

3800–4–50	Dr. Fol.	Cr. Fol.	For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in fifty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) WILLIAM HEATH & CO. EDW. J. RANDALL, *Att'y.* 50 shares.

62 **17.**

2540–4–50. 2546–54–90.			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in one hundred and forty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) XENOPHON BALLI & SON. EDW. J. RANDALL, *Att'y.* 140 shares.

18.

2603–4–20. 3142–4–30. 3291–10. 3295–10. 3404–6–30. 3413–10. 3471–10. 3481–10. 3483–4–20.			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in one hundred and fifty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) WILLEN, ALEX. SMITH & CO. EDW. J. RANDALL, *Att'y.* 150 shares.

19.

727–10. 2649–10. 2677–9–30. 2792–10. 2863–5–30. 2897–9–38. 3100–8–90. 3119–10. 3569–10. 3590–4–50. 3598–9–20. 3601–2–20.	Dr. Fol.	Cr. Fol.	For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in three hundred and twenty shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30 day of Nov., 1881. (S'd) I. & S. WORMSER. EDW'D J. RANDALL, *Att'y.* 320 shares.

63 **20.**

3174–83–100 3195–8–40 3204–8–50 3211–10 3244–8–50 3317–10 3332–3–20 3351–2–20 3354–63–100 3619–23–50 3633–10 3637–8–30 3641–3–30 3778–94–170			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in six hundred and ninety shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 30th day of Nov., 1881. (S'd) KUHN, LOEB & Co. EDW'D J. RANDALL, *Att'y.* 690 shares.

21.

1793–10			For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 17th day of Dec'r, 1881. (S'd) L. H. NILES. EDW'D J. RANDALL, *Att'y.* 10 shares.

22.

1383–10	Dr. Fol.	Cr. Fol.	For value received, the undersigned hereby assign and transfer unto Tom Nickalls & Co., London, all right, title, and interest in ten shares of the preferred capital stock of the New York, Lake Erie & Western Railroad Company, represented by certificate —, heretofore issued by said company, numbered as in the margin. Dated New York, the 17th day of Dec'r, 1881. (S'd) PRINCE & WHITELY. EDW'D J. RANDALL, *Att'y.* 10 shares.

64–5 *Defendants' Proofs.*

U. S. Circuit Court, Southern District of New York. New York, Oct. 4, 1882.

TOM NICKALS and others
ag'st
THERON R. BUTLER and others.

HUGH J. JEWETT, being duly sworn and examined as a witness on behalf of the defendants, deposes as follows:

Examined by WM. G. CHOATE, Esq.:

Q. What is your name, age, residence, and occupation?

A. My name is Hugh J. Jewett; I am in my 65th year; I reside in the city of New York, and am president of the New York, Lake Erie and Western Railroad Company.

Q. How long have you been president of the defendant corporation?

A. Since its organization, June, 1878.

Q. Were you receiver of the Erie Railway Company prior to the organization of the defendant corporation, and for how long a time?

A. I was; the appointment was made on the 25th May; from the 25th May, 1875, to the reorganization of the present company.

Q. Were you familiar with the condition of the property and business of the Erie Railway Company from the time of the organiza-

tion of the defendant corporation down to the present time,
66 and also before the organization of the defendant corporation; and, if so, how much attention have you given to that matter during that period of time?

A. I became president of the Erie Railway Company in July, 1874. As soon as possible I made myself familiar with the condition of the property and business of that company, and from that time up to the present I have devoted my whole time to the management of the business of the Erie Railway Company, of the receivership, and of the New York, Lake Erie and Western Railway Company, and believe that I am familiar with all their interests.

Q. Did you, as president of the defendant corporation, join in and submit to its stockholders and bondholders an annual report for the year ending September 30, 1880? If so, please produce and annex to your deposition a copy of that report.

A. At the annual meeting of the stockholders in 1880—November, 1880. The report was present to be read in the building. My impression is that it was not read. We were in the habit, before submitting the annual report, of preparing a synopsis which gave the financial result of the operations for the year very thoroughly, and which was distributed among the stockholders, and, as a general thing, they have not patience to wait to hear the report read. The report was placed upon the table at the meeting of the board—a copy for each member—and some portions of it read; the whole was read—that is, my report—with the exception of the tables; they are not read; they are never read.

Q. In print?

A. In print; but as a general thing it is not read.

Q. Well, you produce this as a copy, do you? (Handing report to witness.)

A. That is a copy of the report which was submitted to the board in the usual way—a copy laid on the table.

(Said report marked "Schedule A, Oct. 4th, 1882.")

67 Q. Now, referring to this report (a copy of which you have just produced), at page 4, will you state how the sum of $1,790,620.71, there referred to as a net profit from the operations of the year, was expended?

A. The sum of $1,790,620.71 was the balance, after paying the actual cost of operating the road and all the fixed charges out of the gross earnings. It is impossible for me now to point out the items or state specifically the improvements of the road to which that specific sum was applied.

We spent upon the road in its improvement in the increase of equipment, engine-houses, machine-shops, freight-houses, &c., &c., during that year, $2,715,187.23, as appears from the books of the company, about the correctness of which I have no doubt. The $1,790,620.71, arising from the earnings over and above the current expenses of operating the road and fixed charges, is a part of that $2,715,187.23.

Q. Are the statements contained in the report as to the mode in

which that sum was expended, and the purposes for which it was expended, correct?

A. The annual report is made up from the books of the company, as the entries are therein made from day to day during the year, upon which every sum of money paid out is at the time charged, and does accurately and correctly show the amounts paid out, and the purposes for which they were paid.

Q. Will you state now what, in your judgment, based upon your knowledge of the condition of the road and its property, was the necessity or propriety of thus expending this surplus; how, if at all, it contributed to the advantage of the company and its stockholders, and what effect had this expenditure upon the business and condition of the road?

Objected to by counsel for plaintiff as immaterial and irrelevant.

68 A. The wisdom of these and other improvements, preceding and following, is demonstrated by the results. It is hardly possible for me to separate the condition of the road at the termination of the fiscal year of 1879 from its condition at the beginning of the fiscal year 1880. All the improvements made were in pursuance of a general plan of improvements marked out before the reorganization or during the pendency of the negotiation; the amount and cost thereof, estimated for with the general understanding that as fast as they could be made out of the assessments paid by the stockholders, the concessions of interest made by the bondholders, the earnings of the company, and such means as could be derived from other sources, they were to be proceeded with until the completion. The business of the company, therefore, of 1880, because of the improvements made during that year and the year 1879 increased over the business of the preceding year in tonnage 503,251 tons, or 151,889,678 of mile tonnage, and in the year 1881, when the benefit of the improvements previously made and then being made were more fully realized, the increase of the tonnage over the year 1880 was 2,370,931 tons, and in the mile tonnage 263,282,760, and for the year 1880, attributable, in my judgment, entirely to the improved condition of the road and equipment, because of these expenditures, the expenses, in proportion to service rendered, were largely reduced; thus, in the increase of traffic and in the reduction of the expenses, producing this result of $1,790,620.71.

Q. Then, if I understand your last answer, you regarded those expenditures as being necessary for the purpose of increasing the earning capacity of the road and diminishing relatively the expense of doing the business?

Objected to by counsel for plaintiffs as immaterial and irrelevant.

69 A. In my judgment, if these improvements had not been made, and most judiciously made, the company could not have paid its fixed charges; it would have again gone into bankruptcy, and the entire interest of the stockholders been destroyed.

Q. To what extent had these improvements that were completed or proceeding with in the year 1880 been commenced or contracted

for at the commencement of that year—that is, by the 1st of October, 1879?

A. It is impossible for me to answer that question satisfactorily; a good portion, perhaps the larger portion, of these improvements were not done under contract; as far as it could be done we did it by day's work without contract. During the fiscal year of 1879, in carrying out the general plan of improving the road, we expended about $2,836,414.78. By looking at the accounts it will be found that the expenditures of 1880, and even of 1881, are not through yet; it is the extension—completion of the improvements entered upon in 1879—probably but a small portion of that entered upon in the year 1879 was finished that year, as, for example, the grain elevator, which we commenced in 1879, and expended $127,295 upon, we did not complete until some time in the year 1880. I could go on and illustrate that by going over the different items. I would like to say, in further answer, that it was a question of very serious consideration with the representatives of the stockholders and the bondholders, the trustees, whether or not they should consent to the entering upon this general scheme of improvement, because of its magnitude; they were doubtful lest these earnings and these assessments, and this concession on the part of the bondholders, would be all exhausted without the road being put into a condition to make it valuable to the various parties in interest, and hence in 1876 they called for an estimate of what these improvements, as contemplated, would cost.

Plaintiffs' counsel objects to the above answer as immaterial and incompetent.

70 (WITNESS, continuing): I would further state that on the 11th December, 1876, the chief engineer, in obedience to instructions, returned his estimate of what these improvements would cost, $15,542,096.

Q. Were the improvements which he so estimated on, in substance, carried out afterwards?

A. We have not been able to expend anything like so large an amount, and, hence, knowing our limited means, we had to select the improvements most necessary, leaving the others for the future.

Q. Were the various papers printed in connection with this report for the year 1880 submitted with it and as part of it to the stockholders and bondholders?

A. This report as it now is, in its printed form, was distributed, as far as we could distribute it; large numbers were sent to Europe for distribution there and here with the annexed papers; it was distributed by taking our stock list and sending it to every one whose address we could find.

Q. Was the question of the propriety and necessity of making these expenditures a matter of discussion by the board of directors, and did they approve the views expressed by you in this report and take any official action thereon?

Objected to by counsel for plaintiffs as immaterial and as not calling for the best evidence.

A. The fact is, that this estimate was before the board and understood. I cannot say that every matter of importance was submitted to the board, but, under the general instructions of the board, these improvements were made; where the improvements required a contract to be made they were all submitted to the board

Q. Upon this report of the year 1880 being laid before the
71 board of directors was it made a matter of discussion in the board and was it approved by them?

Objected to by counsel for plaintiffs as immaterial, irrelevant, and not calling for the best evidence.

A. Whatever the minutes will show, the fact is, that when this report was first before the board and considered it was referred to a special committee to examine and to report what that committee would advise. That committee made a report, and it was at this meeting that the resolution was adopted. It was at the same meeting that the report was made that this resolution was adopted—the resolution in regard to not paying a dividend on the preferred stock.

Q. Is there anything else bearing on the issues in this case that you desire to state in your deposition?

A. I desire to state, in justification of myself and of my associates, that upon the reorganization of this company, based upon an agreement entered into between the Erie Company, by its representatives, its bondholders, and its stockholders, the only inducement which was offered, or could be offered, to its bondholders and its stockholders was, that through the reorganization and the improvement of the road out of the assessments upon the stock, the concessions from the bondholders of their interests, and the earnings of the company, that the road could be put in condition not only to pay its fixed charges, but eventually become profitable to its stockholders. That in all those negotiations, so far as I understood, that was to be carried out, these improvements, until the plan of reorganization was fully complied with. That involved a concession of a portion of the interest to some of them up to June, 1883. We acted upon that theory, and although the reports, in which that idea was foreshadowed all the time, were distributed to all classes of interests, the board never heard a doubt expressed upon the subject until
72 about the close of the financial year of 1880; then the question was made.

Objected to by counsel for plaintiffs as immaterial, incompetent, and simply a matter of opinion, and as not evidence of any fact which is material evidence in this controversy.

Q. From what is the table or account on pages 3 and 4 of the report, including the expression "leaving a net profit from the operations of the year of $1,790,620.71," taken?

A. The statement, "leaving a net profit from the operations of the year," does not appear upon the books. The fact that there was a surplus in that year in this report is taken from the profit and loss account for the fiscal year ending September 30th, 1880. In the

report to the State engineer, made under oath and by law, the words "net profit" do not appear. The results appear in the report to the State engineer, but they are stated in different form to that of our annual report.

Objected to by counsel for plaintiffs as incompetent, the report itself being the best evidence as to its contents.

Cross-examination by Mr. TRACY:

Q. Do I understand you to say that this printed report for the fiscal year ending September 30, 1880, was finally acted upon by your board of directors some time in the month of December, 1880?

A. Yes.

Q. You do not mean to have it understood, do you, that this report, as we now have it, was presented to the stockholders at their annual meeting on the 30th November, 1880?

A. I mean to say—and I speak simply from recollection,
73 because we have very few stockholders who attend any meeting— that on the 30th November, 1880, that report—the report for that year—was there to be read if anybody wanted to read it.

Q. I call your attention to the date at the commencement of the report, purporting to be signed by yourself, as being the 9th December, 1880—that is, ten days after the time of this annual meeting; does the examination of that date refresh your memory in regard to any of these particulars?

A. The annual meeting of the stockholders is on the last Tuesday of November of each year. In 1880 there was a great anxiety on the part of the board with regard to this claim for a dividend upon the preferred stock, and on my part, and I took time to examine the question very thoroughly, taking counsel also, and put upon paper my own views. I should say the board adjourned over their usual time to get this report before final action. I am not confident about it.

Q. Is it still your recollection, sir, that this report, in its present form as we now have it, was printed and read at that stockholders' meeting?

A. No; not printed; not at all. In addition to the report—that is, not my report—the report of the officers of the company—was manuscript; but before the stockholders a printed synopsis of the report was read, I believe. There were a very few there.

Q. Then the matter which was read would probably be that which appears in this report as the report of the general manager and the report of the auditor?

A. I don't think the report of the auditor in detail generally; the synopsis was read and was before the members of the board for some time.

Q. Now, I understand you to say that this question had already arisen about the right of these preferred shareholders to a dividend for the fiscal year ending September 30, 1880; when did that
74 question first arise, to your recollection; was it about the time

of the letters of advice given you by the counsel which appear annexed to your report for that year?

A. Previous to November 19th, 1880, how long previous I cannot tell, but my recollection is that it was considerable time, I had been in correspondence with at least one of the trustees and their counsel with regard to this dividend. It was urged, with considerable pertinacity, that it should be made; that correspondence was submitted to the board, and it was by the instructions of the board, whether formally or not I cannot say, that I took the advice of counsel upon that subject; it was during the year 1880 and after the close of the fiscal year and previous to the annual meeting.

Q. Now, you have said something about a general plan or scheme of improvements having been adopted after the plan of reorganization was adopted; now ——

A. No; what I said, or what I intended to say, was that during the negotiations looking to the reorganization of this company the question was put to me, time and time again, by the parties in interest: "What's the use of reorganizing? You can never pay the interest upon this large debt." That question was put to me not only by the trustees but by bond and share holders. I went to London, spent several weeks there negotiating with them, during the summer of 1876; came home, I think, in September; I was unable to speak, with any degree of certainty, as to the details of the improvements which an experienced railroad man (and I consider myself as one of that class) would deem necessary, for I went over the road and examined it in detail; I therefore, upon coming home, instructed the chief engineer to go over the road carefully and make his estimates, in detail, of what it would cost to put the road in condition to compete with its competing lines, to earn to its fullest capacity with the greatest economy, believing, as I did, and do now, that when in that condition it would not only pay on every
75 fixed obligation it had, but in the course of time become of value to all classes of its shareholders. On the 11th December of that year he reported, pointing out what he deemed necessary with regard to the gauge, with regard to steel rails, its double track, its engine houses and shops, its stations and sidings, its bridges, its terminal facilities at New York, its rolling stock, and then giving an estimate, in detail, of what he deemed necessary to the putting of the road in the condition which I have indicated; he gave me items and the cost thereof in detail.

Q. Is that report in writing?

A. Yes.

Q. Is it published in print?

A. In the report of 1876, to the board of directors, it was.

Q. Will you please produce a copy of that report and have it annexed to your deposition?

A. Yes.

Copy of said report produced and marked "Schedule B., Oct. 4, 1882."

Q. This report was made at the time it bears date—the report of the chief engineer?

A. Yes.

Q. Was that previous or subsequent to your visit to London?

A. Subsequent.

Q. Now, I would like to ask your recollection about the date at which the articles of reorganization were entered into; was it about the time they bear date—that is, the 14th December, 1877?

A. I think so; Mr. Powell was here at that time; it was got up principally by him and Mr. MacFarland; I think that is about the date.

Q. The persons to whom you have referred as representing the interests of various kinds in the enterprise of the Erie rail-
76 way, are those persons whose names are annexed to the agreement, are they not—the agreement of reorganization, I mean?

A. No, sir.

Q. Well, if not those persons, who were the persons with whom you yourself talked?

A. Those were the persons I discussed the questions with there in 1876, but they are not the parties to the reorganization.

Q. I was asking whether those are the persons with whom you discussed those questions?

A. These are the English parties—not the American. The discussion with these gentlemen was at the meeting when this contract, in form, was being settled.

Q. Were you cognizant of the negotiations which preceded, and the final settlement of the form of this agreement for reorganization of the old company on the 14th December, 1877?

A. I have no doubt I was.

Q. Now, I ask you again, in order to fix the date whether or not this report of the chief engineer, as to the improvements which he thought should be made on the road as a piece of property, was prior in date to the adoption and final acceptance of this agreement of reorganization?

A. I cannot state distinctly. That report of the engineer was made, I think, about the time of its date. If that was before or after I cannot tell.

Q. Is there no written evidence other than this report of the engineer, and other than this contract of reorganization, relating to this plan or scheme of improvement of the road?

A. None that I recollect of, unless it is in my correspondence with the trustees.

Q. Those trustees to whom you have just referred are the trustees under this agreement of reorganization?

A. Yes.

77 Q. I understand you to say that that report of 1876 was published and spread abroad among the English holders as well as the American holders?

A. Yes.

Q. Was this money—surplus, we will call it—the operations of

the fiscal year of 1880, not in fact applied to the improvement and increase of the property of the company? I use those two words because they are words that are used in the agreement of reorganization.

A. I believe that surplus was applied to the improvement of the property of the company. I will change that a little; the improvement of the property of the company and to the acquisition of new property necessary, in my judgment, to the operation of the road to its fullest capacity and greatest economy.

Q. Referring again to your own report for the fiscal year ending in September, 1880, page 4, to this amount there mentioned of $737,119.34, I ask you whether the fact there stated that that sum of money received from the assessments paid on the stock of the old company is correct?

A. I believe it is.

Q. Will you please state to me how much money was realized from the same source in the succeeding fiscal year—that is, ending September 30, 1881.

A. According to the report of 1881, which I believe to be correct, it was $109,988.25

Q. From both kinds of stock?

A. The entire assessment received during that year.

Q. During that year—this last year ending September 30, 1881—a dividend was declared and paid on this preferred stock, was it not?

Objected to by counsel for defendants as immaterial and irrelevant.

A. It was.

78 Q. Had these improvements of which you have spoken been already paid for at that time, at the close of that fiscal year?

Same objection by counsel for defendants.

A. I have no idea that they had been already paid for. The improvements began in 1879 and continued in 1880, and were not completed, nor were they completed in 1881—that is, all of them.

Q. How much money was expended for the year 1881 upon those improvements?

Same objection by defendants' counsel.

A. If you mean the improvements commenced and unfinished in the fiscal year of 1880, I cannot answer, but the amount expended during the year 1881 in the completion of the improvements to the road, its equipment, &c., was $2,933,845.51.

Q. Turn, if you please, to the report for the fiscal year ending 30th September, 1881, and state to me what the surplus for that year was.

Same objection by counsel for defendants.

A. $1,887,417.74; that is, after deducting the operating expenses, interest, and other fixed charges.

Q. That is a statement of the earnings of that year, computed

upon the same basis as the computation of the earnings for the previous year, as appearing on pages 3 and 4 of the report of 1880?

Same objection by counsel for defendants.

A. Same basis.

Q. On looking over your report, as printed for the year 1880, that part of it which refers to this question of declaring a dividend upon preferred stock, particularly this passage, on page 13: "Such may be the legal effect of the adoption of the certificate of incorporation, and it may be it will bear the construction now sought
79 to be given it." Wasn't it the determination of the board that, if the matter was in their discretion, they would not declare a dividend, but if the law required the payment of a dividend they would do it?

Same objection by counsel for defendants.

A. It was not, according to my best recollection. If the question had been presented, and the board had been advised before it expended the money earned in 1880, in time to have limited their contracts and obligations, they, no doubt, would have followed the language of the law, whatever the consequences may have been.

Counsel for plaintiffs objects to the last part of said answer as irrelevant and immaterial, and not called for by the question.

(WITNESS continuing:) In the statement of this question to the board in the form I made it in my report, it was to develop to the board my judgment of what the consequence would be to the company if the construction claimed was held to be the true and lawful one. That it not only gave to these preferred stockholders the right to any surplus funds over and above the working expenses, but that the same construction made them prior to any claim on the part of the bondholders or holders of other fixed liabilities for payment until the preferred shareholders were satisfied, and that such a result would be disastrous to all parties.

H. J. JEWETT.

Objected to by plaintiffs' counsel as not responsive to any question, and as immaterial and incompetent.

Sworn to before me, this 11th day of October, 1882.

JOHN A. SHIELDS,
Examiner.

80 AUGUSTUS R. MACDONOUGH recalled as a witness on behalf of the defendants.

Examined by Mr. CHOATE:

Q. Please produce any record on the minutes of the board of directors of the defendant corporation referring to the report for the fiscal year ending September 30, 1880, or referring to the matter of dividend on preferred stock.

A. I produce the regular minutes of the proceedings of the board

at a special meeting held December 9, 1880, which contain the following resolution: (Folio 166.)

"The annual report to the stockholders was presented and read, and on examination, after consideration and discussion, it was—

"*Resolved*, That in the present condition of the property of the New York, Lake Erie and Western Railroad Company its directors do not deem it wise or expedient to declare a dividend upon its preferred stock."

Q. Is that the only reference to those subjects that you find in the minutes of the board of directors?

A. It is, except a reference to a correspondence in the minutes of the same meeting.

Cross-examined by Mr. TRACY:

Q. State, if you please, what that last reference is.

A. "The president presented a correspondence had by cable with the London trustees this morning on the subject of a dividend upon the company's preferred stock, which, being considered, on motion of Governor Morgan, it was—

"*Resolved*, That the action of the president in the correspondence just read be approved by this board."

81 Q. Where is that correspondence?

A. In the hands of the president or his private secretary.

Q. Turn, if you please, to the record of the annual meeting of the stockholders, held previous to this directors' meeting, and state on what day it was held.

A. The annual meeting was held on the 30th day of November, 1880.

Q. Is there any reference in the minutes of that meeting to this annual report, which was referred to in the directors' meeting?

A. No, sir; there is not.

Q. Is it your recollection that this annual report was then presented to that meeting of stockholders?

A. I don't recollect that it was.

Redirect examination:

Q. You do not recollect whether it was or not?

A. I do not recollect whether it was or not.

Q. Please state how many directors attended the meeting of December 9th, and their names.

A. There were present thirteen directors, their names being Messrs. Butler, Dana, Dickson, Durkee, Grant, Jewett, Johnston, Morgan, Parker, Ramsdell, Stebbins, Strong, and Welch.

Recross-examination:

In reply to the former question of plaintiff's counsel the witness produces the correspondence before referred to, of which the following are copies:

Dated

LONDON, *Dec.* 9, 1880.

To Jewett:

From Powell.

"Does counsel seriously advise outlays on capital can be charged before declaring earnings? Has he seen decision master rolls?"

82 Dated

NEW YORK, *Dec.* 9, 1880.

To Powell:

From Jewett.

"They so advise. Have no reason to doubt their sincerity. Mail their opinions this week. They consider subject as one governed by our own laws."

AUGUSTUS R. MACDONOUGH.

Sworn to before me, this 11th day of October, 1882.
JOHN A. SHIELDS, *Examiner.*

(Endorsed:) It is consented that these depositions be filed with like effect as if filed within the time limited by the rules. N. Y., Oct. 21, 1882. Tracy, O. & T., pl'ffs' sol'rs. U. S. circuit court. Filed Oct. 21, 1882. Joseph M. Deuel, clerk.

83 & 84 SCHEDULE A.—*Report of the Board of Directors of the New York, Lake Erie & Western R. R. Co. to the Share and Bondholders for the fiscal year ending September* 30, 1880. *New York,* 1880.

85

OFFICE NEW YORK, LAKE ERIE
AND WESTERN RAILROAD CO.,
NEW YORK, *December* 9, 1880.

To the share and bondholders of the New York, Lake Erie and Western Railroad Co.:

The board of directors submit herewith their report of the operations of the company for the fiscal year ending September 30, 1880.

The gross earnings and operating expenses of the road, including all branches and leased lines, have been as follows:

Earnings.

From general freight	$11,199,498 37	
" coal "	3,191,616 96	
" passengers	3,682,951 18	
" mails	163,771 38	
" express	338,867 15	
" miscellaneous	116,403 82	
		$18,693,108 86

Operating expenses.

For conducting transportation	$5,109,979 90	
" motive power	3,291,141 43	
" maintenance of cars	861,135 29	
" maintenance of way	1,938,715 41	
" general expenses	442,953 32	
		11,643,925 35
Net earnings from traffic		$7,049,183 51
86 To which add earnings from other sources		783,956 65
Total		$7,833,140 16
From which deduct interest on funded debt, rentals of leased lines, and other charges		6,042,519 45
Leaving a net profit from the operations of the year of		$1,790,620 71

This amount, together with $737,119.34, received during the year from the assessments paid on the stock of the Erie Railway Company, has been applied to the building of double track, erection of buildings, providing additional equipment, acquiring and constructing docks at Buffalo and Jersey City, and to the addition of other improvements to the road and property.

The earnings and expenses of the year, compared with those of 1879, show an increase in gross earnings of $2,751,086.28, an increase in operating expenses of $469,226.40, and an increase in the net earnings of $2,281,859.88.

The ratio of expenses to earnings decreased from 70 per cent. in 1879 to 62 per cent. in 1880.

The freight carried, as compared with 1879, shows an increase in tonnage of $6\frac{1}{10}$ per cent., and in earnings of $2,157,634.34, an increase of $17\frac{6}{10}$ per cent.

Some of the benefits which we have expected to derive from the improvement of our track, equipment, and facilities are shown in the fact that, notwithstanding the freight tonnage increased to the extent of 503,251 tons, and the ton mileage to the extent of 151,889,678 tons, as compared with last year, the freight train mileage decreased 295,946 miles, or $3\frac{5}{10}$ per cent., the average train load increased $25\frac{1}{2}$ tons, and the average haul increased six miles.

The expense per ton per mile of doing the business was $\frac{534}{1000}$ cents, being a decrease from last year of $\frac{27}{1000}$ cents.

87 The coal tonnage decreased from that of 1879 to the extent of 342,753 tons, but, owing to the better rates received for its transportation, the earnings increased $7,405.59. If this branch of our traffic had remained equal in volume to that of last year, it will be seen that the result would have been a considerable addition to our earnings.

Capital Stock.

The revised and corrected accounts received from the trustees in London show that up to September 30, 1880, assessments have been paid on the following amounts of stock of the Erie Railway Company:

Common stock	$77,083,800 00	
Preferred	8,156,725 00	
		$85,240,525 00

It will be observed, by comparison, that the amount of preferred stock upon which such assessments have been paid is 100¼ shares more, and the amount of common stock is 239 shares less than the figures given in the report of last year.

Of the $85,240,525 there has been issued in exchange for the stock of the Erie Railway Company:

Common stock N. Y., L. E. & W. R. R. Co.	$75,879,300 00	
Preferred stock N. Y., L. E. & W. R. R. Co.	7,367,700 00	
		$83,247,000 00

There is still held awaiting such exchange:

Common stock	$1,204,500 00	
Preferred stock	789,025 00	
		$1,993,525 00

88 There are still outstanding 9,162 shares of common and 3,801¾ shares of preferred stock of the Erie Railway Company, the holders of which have failed to pay the assessment provided for in the plan of reorganization.

Two suits are now pending against this company which have been instituted by the holders of some of this outstanding stock to compel the company to issue its stock therefor in exchange, notwithstanding the failure of such holders to comply with the plan of reorganization within the time therein prescribed.

The board have no means of forming any opinion as to what the result of such suits may be.

Assessment Fund.

The assessments paid upon the stock of the Erie Railway Company, as finally reported by the reconstruction trustees, have been as follows, viz:

Preferred stock, at $3.00 per share— 23,372¼ shares	$70,116 75
Common stock, at $6.00 per share— 72,982 shares	437,892 00
Prefered stock, at $2.00 per share— 58,195 shares	116,390 00

Common stock, at $4.00 per share— 697,856 shares	2,791,424 00
	$3,415,822 75
To which add for interest on assessments, interest and profits on investments, sterling exchange, etc., up to September 30, 1880	377,503 95
Total	$3,793,326 70
89 Of this sum we had received up to September 30, 1880, $3,096,413.29, of which we had applied to improvements (as per auditor's report)	$3,092,079.34
And there has been disbursed by the trustees for expenses in London and New York, taxes, services, judgments, and otherwise conducting the reorganization plan, the sum of	570,002 73
Leaving a balance in hands of our treasurer September 30, 1880	4,333 95
And balance in hands of trustees at same date	126,910 68
Total	$3,793,326 70

Funded Debt.

Fourth Mortgage Bonds.

The fourth mortgage bonds of the Erie Railway Company, subject to the lien of which the property of that company was purchased by this company, matured and became payable October 1, 1880. They amounted to $2,937,000 and bore interest at the rate of seven per cent. per annum.

This company made substantially the same proposition to the holders of these bonds as that made during last year to the holders of the second mortgage bonds, namely, to extend the mortgage for a period of forty years, reducing the rate of interest to five per cent. This proposition has been acceded to by almost the entire holding of those bonds. A saving of interest is thus effected on this mortgage of $58,740 per annum.

The expense attending this transaction is charged and appears in the profit and loss account.

90 Second Mortgage Bonds.

During the year $24,000 of these bonds have been purchased, under the arrangement which was explained at length in the report of last year, reducing the principal of this mortgage to $2,150,000 and resulting in a reduction of $1.200 per annum in the interest to be paid thereon.

The reason for the purchase of the bonds, as above stated, was in the fact that the extension or renewal was by means of a coupon sheet attached to the original bond. These particular bonds were so much mutilated, however, that they were not in condition to

have such coupon sheets attached. It, therefore, became necessary to purchase or otherwise dispose of them, and the most economical way was believed to be by purchase.

First Consolidated Mortgage Bonds.

During the present year the holders of $50,000 of these bonds have assented to the plan of reorganization, which has involved the issuing, for the coupons thereof, of first consolidated funded coupon bonds, thus increasing the amount of such coupon bonds from $3,688,001.10 to $3,699,236.10. The interest upon this last-named amount has been charged for the year.

The amount of first consolidated mortgage bonds at present unassented is $193,000.

As explained in the report of last year, the plan of reorganization provides for the issue of income bonds to parties who have assented to such plan by paying six dollars per share on the common and three dollars per share on the preferred stock of the Erie Railway Company.

Under this provision income bonds have been issued during the past year to parties entitled to receive them to the extent of $508,008.75.

91 It will be observed, therefore, that (assuming that the entire issue of the fourth mortgage bonds will be extended) the funded debt will be changed in the following particulars:

Second mortgage bonds (New York and Erie railroad) decreased to	$2,150,000 00
First consolidated mortgage funded coupon bonds (New York, Lake Erie and Western railroad) increased to	3,699,236 10
Income bonds issued	508,008 75

For a detailed statement of the funded debt, as far as ascertained to September 30, 1880, as well as for a detailed statement of the interest payable thereon, reference is made to the report of the auditor.

Improvements.

Much work has been done during the past year in extending our second track, improving and reducing the grades, straightening the line of the road, etc., etc., for the details of which reference is made to the report of the general manager. With the exception of a few miles on the Buffalo division, the entire road from Jersey City to Buffalo is now double-track, of the broad and narrow gauge. The alterations which have been made in the line in connection with our heavier locomotives have resulted in largely increasing the train load, and consequently reduced the extent and cost of our train service.

The gauge of the western division from Hornellsville to Dunkirk has been narrowed, as well as that of the Bradford branch.

The work of altering our rolling stock from the broad to the

narrow gauge is progressing as rapidly as possible, consistent with good economy.

92 Reference is particularly made to the reports of the auditor and of the general manager for detailed statements of the improvements and additions which have been made to the property and of the expenditures made on that account, as well as for the details of the financial condition and current operations of the company.

Elevators.

The elevators at Jersey City and at Buffalo, referred to in the report of last year, have been completed, and for several months past have been in active operation.

Traffic Arrangements.

The beneficial results which were expected from the arrangement between the Trunk lines for a division of the West-bound traffic, which was referred to at some length in the report of last year, have been largely realized. Rates have been more scrupulously observed than for a long time past. The system of arbitration is also working satisfactorily and has been found to be a valuable means of settling disputed points, which must necessarily arise where so many roads are competing for the same business. The prospects for a continuance of the friendly relations between the roads were never better, and there promises to be a supply of business which will keep them all taxed to their full capacity.

Preferred Stock.

Within the last few weeks divers communications have been addressed to the president of this company, in some instances urging, as a measure of policy, and in others demanding, as a matter of right, that the board declare and pay a dividend on the preferred stock out of the earnings for the fiscal year just closed.

93 There has been no difference of opinion among the members of your board of directors as to the policy to be pursued in the management of your property. Nor have they supposed until very recently that there was any room for a difference of opinion between them and the shareholders, whether of the preferred or common shares, as to the wise course to pursue for the protection of all interests. The board fully recognizes the fact that when the company is in condition to make any declaration of dividends the preference shareholders are entitled to the full six per cent. before the holders of the common stock can demand any amount whatever, but that, with this exception, they are in all respects equal, having the same interests and subject to the same duties and obligations for the proper maintenance and improvement of the property.

When it became manifest that the Erie Railway Company in the then condition of its road and property could not meet and discharge its fixed liabilities, much less make dividends to its shareholders, it

was agreed by all those in interest that a reorganization was necessary, and that in such reorganization provision should be made for such additions and improvements to the road as would enable the company to operate it to its utmost capacity and with the greatest economy, to the end that it might discharge its obligations to the public and to its creditors, as well as realize a reasonable return to its shareholders. How these improvements and additions could be provided for became a subject of the most serious and anxious consideration.

To aid in accomplishing these ends it was determined to make an assessment of four and six dollars per share on the common stock and two and three dollars per share on the preferred stock, and to ask the first consolidated bondholders to fund their coupons for a period equal to three years, and the second consolidated bondholders to fund their coupons for a term equal to five years. It was
94 hoped that this concession by the bondholders and the amount thus to be realized from the stockholders would enable the company to accomplish very much in the way of the improvements absolutely needed for the successful working of the road, and that with the surplus earnings thereafter to be realized by reason of such improvements and after the payment of its expenses, outlays, and fixed charges, the company would be enabled at no very distant day to make a distribution among its shareholders in the way of dividends, recognizing the fact, however, that the preferred shareholders would be entitled to the full rate of their dividends before the holders of the common stock would be entitled to anything. Your board did not suppose that the propriety of applying all the earnings after the payment of expenses and fixed charges to the improvement of the property was questioned by any one, as they understood the whole plan of reconstruction to be largely based on that policy.

The bondholders would not likely have made any concession from their claims had they supposed that the fund to be realized from them was, to the extent required, to be applied to the payment of dividends to the preferred shareholders, nor would the holders of the common stock have been likely to pay their assessments so much in excess of the payments made by the preferred holders had it been intimated to them that the increased earnings to result from the improvements made were to be used in the payment of dividends to preferred shareholders before the property was put in condition to earn to its full capacity and with the greatest economy.

The purpose to be accomplished, as understood by your board, was to avoid as far as possible the increase of the fixed liabilities of the company, to improve and complete the road out of its earnings and the assessment fund, and then to give to the pre-
95 ferred shareholders the full benefit of their preference, reserving to the holders of the common stock that which remains.

Hence, in the annual report of the receiver of the Erie Railway Company to the board of directors for the year 1876 (which report was communicated to you by said board) there is a statement of the amount estimated as necessary to make the required improvements,

and the receiver remarked that if certain of the improvements were made, "together with some of the proposed terminal facilities, the capacity of the road to earn at a largely reduced expense would be greatly increased, and it would probably be able out of its earnings, in addition to discharging its fixed obligations, to make the balance of the improvements required."

And again, in the report of this board to the shareholders for the year 1878, in referring to the needed improvements of the property, and to the various sources from which the means to make such improvements were to be derived, and naming the surplus profits, after paying the interest, as one of the sources, they say, "The amount of such profits that may be applicable to improvement cannot be safely assumed, including the surplus revenue from June 1 to September 30, 1878, for the next two years, at more than two and a half millions dollars."

Many other references might be made to the actions and doings of those having charge of the reconstruction scheme, tending to show that the surplus earnings, after the payment of expenses and fixed charges, were chiefly relied on to carry out the plan.

It is now claimed by some that whatever may have been the policy or intention of those having charge of the plan of reconstruction, previous to the organization of this company, such policy or intentions were superseded by the provisions of the certificate of incorporation, which, after its adoption, became the law of the company, and is binding upon all parties. Such may be the legal effect
96 of the adoption of the certificate of incorporation, and it may be it will bear the construction now sought to be given it. It is clear your board did not so understand it when they made the report referred to, the date of which was subsequent to the adoption of such certificate.

It is also certain that, notwithstanding these and other expressions of like tenor from your board (and others), and their conduct in accordance therewith for the two years last past, no one, until within a very short time, has called in question either the wisdom or the lawfulness of the policy or course pursued. Yet, if it be true that by virtue of the certificate of incorporation the preferred stockholders are entitled to their dividends out of the profits, regardless of the necessities of the company, and that such "profits" are what remain after the payment of the current expenses, then the board has been in error, and instead of appling the surplus earnings or profits (after the payment of current expenses) to the liquidation of the fixed charges and to improving the property, they should have set apart, even before the payment of the fixed liabilities, an amount sufficient for a dividend of six per cent. to the preference shareholders, and it is to this question the attention of the board has been carefully directed.

The thirteenth article of the certificate of incorporation, after providing for the amount of the preferred stock to be issued, the number of the shares, and the amount thereof, says, "entitling the holders to non-cumulative dividends at the rate of six per cent. per annum in preference to the payment of any dividend on the common stock,

but dependent on the profits of each particular year as declared by the board of directors."

Railroad companies, in stating their annual accounts, credit their earnings and debit their expenses. The balance, if any re-
97 mains to the credit, is called surplus or net earnings, which, with all well-managed companies, is applied to the payment of whatever fixed charges may exist, to the improvement of the property, or to such other purposes as the board, in the exercise of a sound discretion, may deem best for the good of the company, and whatever balance may remain may be distributed to its stockholders. But it is claimed in the present case that the word "profits," as used in the certificate of incorporation, has a legal significance, and that when such profits are ascertained in the usual mode of stating the accounts they must (or so much thereof as is necessary) be applied to the payment of a dividend on the preferred stock; that the right of the shareholders to a dividend does not depend on its declaration by the board, nor on the condition of the company, nor upon any fact other than a statement of the accounts; and that if such accounts, as presented to or declared by the board, show that there is a "profit" or a balance after the payment of expenses, then the right to a dividend attaches, and that the board has no right to otherwise dispose of the fund, regardless of what the necessities of the company may be. And it is because of this view of the case, as understood by the board, that the present demand is made.

The board of directors may declare a dividend. They may direct the dividend to be paid out of the net profits. But they cannot by any form of declaration create net profits. As a matter of convenience in the keeping of the accounts, the difference between the expense of conducting the business of the company and its earnings may be stated as net profits. No doubt it is the common practice to so state it. But whether or not there has been any profit subject to division among the shareholders depends upon a result to be ascertained by an analysis of all the accounts, and not upon the terms used in their statement or the declaration of the board.

98 The board is therefore advised that the words "as declared," used in the certificate of incorporation of this company, do not apply to the word "profits," but to the dividend to be declared, and requiring of the board, before it declares any dividend to the common shares, to declare and pay a dividend of six per cent. to the preference shares. If the difference between the earnings and the current expenses is net profits, and the language used in our certificate of incorporation applies to the profits and not the dividends, and the net profits are not sufficient to pay the interest and other indebtedness, the board would have to prefer the preferred shareholders to all classes of creditors, because no exception is made, and the contention being that the profits as declared by the board shall be applied to the payment of a dividend, etc. But such an inconsistency could not have been contemplated by any one.

Your company is a New York corporation, subject to all the laws of the State, and your board of directors is also, individually and collectively, subject to such laws and to all the duties, restrictions,

and penalties they require and impose. The general law of the State provides that "it shall not be lawful for the directors or managers of any incorporated company in this State to make dividends, excepting from the surplus profits arising from the business of such corporation," and makes the directors individually liable for any payments made on account of dividends in excess of such surplus profits.

In a case in almost every respect analogous to our own, wherein preferred shareholders claimed that they were entitled to their dividends out of the net earnings, regardless of the general necessities of the company and of its other indebtedness, Judge Blatchford, of the circuit court of the United States, in refusing the application for an order to compel the payment of such dividends, and in
99 defining what constituted "net earnings," said: "When all liabilities are paid, either out of the gross receipts or out of the net earnings, the remainder is the profit of the shareholders, to go towards the dividends, which in that way are paid out of the net earnings." And in the same case, when before the Supreme Court of the United States, that court, in affirming the decision of the circuit court, said: "The preferred dividends were to be paid out of the 'net earnings of the road.' The lexical definition of net 'is clear of all charges, or deductions.'—Webster. 'That which remains after the deduction of all charges, or outlay, as net profit.'—Worcester. The popular acceptation of the term is the same." The error, if any has been committed, has been in the making of the improvements to the road and in the application to that purpose of the surplus earnings, so far as realized, and the use of the credit of the company to the extent needed. It must be borne in mind, however, that if these improvements had not been made there would in all probability have been no profits about the distribution of which any question would have been necessary, because the increased earnings of the road and the economy with which it has been operated are attributed largely to its improved condition and to the increased facilities produced by such outlays and such use of its credit. But the board is not willing to admit that in this they made any error, or in any respect departed from the heretofore avowed policy of all parties in interest.

Your board has great confidence in the future of the company; but whether or not that confidence is to be realized depends very much upon whether the policy marked out by the shareholders during the period of the reorganization or reconstruction of the company is persisted in. This is a question for the shareholders to decide, not the directors.

The board have heretofore pursued the policy it was under-
100 stood you had inaugurated, and if a change is to be made it is for you to indicate and direct it. It is but proper here to state that it appears from the stock register of the company, on the date of the closing of the books, that, of preferred shares, 58,567 shares are held in America and 15,874 shares in Europe, and that, so far as your board have been able to learn, the American holders, who are familiar with the property and its necessities, and with its man-

agers and their policy, have given no indication of any dissatisfaction.

Our attention has been called to a case lately pending in the high court of justice, chancery division, in England, wherein the master of the rolls made an order directing the payment of a dividend to the preferred shareholders in the London Tramways Company, Limited. But the question in that case seems to be simply one between the preferred and common shareholders, and does not furnish the necessary light as to how the master would consider a case similar to our own.

In the case, however, of Corry *vs.* The Londonderry and Enniskillen railroad, decided by the master of the rolls in 1860, which was very similar to ours, the master laid down the doctrine fully supporting, as we understand it, the policy we have pursued in the application of our surplus earnings.

Not content, however, with our own examination, we have referred this question to counsel for their advice, and the opinions which have been received in answer to such inquiry are hereto attached.

Conclusion.

The board takes pleasure in testifying to the faithfulness and efficiency with which the various officers, agents, and employés of the company have discharged the respective duties assigned them.

Respectfully submitted. H. J. JEWETT,
President.

101 *Appendices.*

Hon. Hugh J. Jewett, president.

DEAR SIR: You have asked our opinion on the proper construction of section 13 of the plan and agreement for the reorganization of the Erie Railway Company, which constitutes a part of the certificate of incorporation of the N. Y., L. E. & W. R. R. Co. This section reads as follows:

"13. Preferred stock to an amount equal to the preferred stock of the Erie Railway Company now outstanding, to wit: eighty-five thousand three hundred and sixty-nine shares, of the nominal amount of one hundred dollars each, entitling the holders to non-cumulative dividends at the rate of 6 per cent. per annum, in preference to the payment of any dividend on the common stock, but dependent on the profits of each particular year, as declared by the board of directors."

The question you put to us is, under what circumstances the holders of preferred stock are entitled to a dividend or dividends out of the profits earned by the company during any particular year.

Our answer is, that whenever the board of directors shall declare any dividend or dividends payable to the shareholders out of the profits of any particular year the preferred stockholders are entitled to have set apart to them an amount equal to 6 per cent. on their stock before any dividend is declared or paid to the holders of common stock.

The whole scope and object of the section was to declare—

1. The number of shares of preferred stock of the new company.

102 2. The non-cumulative character of any dividends to which such stock might be entitled on the same being duly declared by the directors.

3. The maximum rate of such dividends.

4. The preference which the preferred stock should have up to the maximum rate of 6 per cent. before any dividend should be paid to the common stockholders.

The administration of the affairs of the company by the board of directors is not restricted by this 13th section, except in the four particulars above enumerated. It is for the board to say if any, and when and what, dividends shall be declared and paid to the stockholders out of the profits of any particular year. The exercise of that power by the board rests in a proper administrative discretion, precisely as the exercise of a similar power in boards of directors of other corporations. Whether the profits or surplus earnings of any particular year shall be divided among the shareholders, or employed in the payment of the debts of the company, or improving its property and facilities for the more economical and efficient transaction of its business, are questions which rest in the sound discretion of the board. Beyond the preference up to the maximum rate of six per cent., which this section secures to the preferred shareholders when the directors declare a dividend, those shareholders stand in the same relation to the government of the corporation, and on the same legal ground, as do the holders of common stock. When the board of directors declare a dividend the preferred stockholders are entitled to this preference; but whether such a dividend shall be declared or not rests with the board, precisely as it would if there were no preferred stock at all. This would be so under the general law, and the closing part of the section expressly makes the right to any dividend "dependent on the profits of each particular year as declared by the board of directors."

103 If any authority is needed in support of this view it will be found in St. John *vs.* The Erie Railway Company, 22 Wallace, 146.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND.

November 19, 1880.

OFFICE OF SHIPMAN, BARLOW, LAROCQUE & MACFARLAND,
No. 35 WILLIAM STREET, NEW YORK, *November* 17, 1880.

In the matter of the preferred stock of the New York, Lake Erie & Western Railroad Company.

The 13th paragraph of the plan of reorganization provides that the holders of this stock shall be entitled to "non-cumulative dividends at the rate of six per cent. per annum, in preference to the payment of any dividend on the common stock, but dependent on the profits of each particular year as declared by the board of directors."

The question presented is, by what principles the board of directors is to be governed, and upon what basis the board is to act in determining what are "profits of each particular year," for the purpose of this dividend. The question does not appear to present any serious difficulty. It is important to bear in mind that preferred as well as common stockholders bear the relation of proprietors to the corporation, not that of creditors. It is sufficiently accurate to say that, although free from personal liability, they or their corporate property and franchises sustain the relation of debtors to the creditors of the corporation.

Therefore, in considering the question of declaring a dividend on the preferred stock, it is the first duty of the directors to determine whether it can be declared without any danger whatever to the rights of creditors of all classes, as well unsecured creditors as those whose debts are secured There can be no profits in the just sense of that word until the liabilities of the company are duly taken into account and provided for.

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The rights of creditors having been provided for, the directors, in the next place, should take into account the current requirements of the company for other purposes than the payment of existing debts, maturing and to mature. This branch of the question concerns the subject of good railroad management and presents rather a question of administration than of law; for no court undertakes to review the honest decision of a board of directors as to the propriety of declaring a dividend. The directors are, unquestionably, entitled to take into consideration all the wants of the corporation, and to make due provision for supplying them, whether they relate to construction, additions, improvements, or anything else.

But it is not to be inferred from what has been said that the corporation must be entirely free from debt before a dividend can be declared, or that it is needful to actually set aside a sum equal to the maturing obligations of the company, or a sum equal to the prospective requirements of the company, for other purposes than the payment of debts already incurred. The corporation may, doubtless, with perfect propriety carry any amount of current indebtedness that experience has shown to be safe, or that prudent and conservative management would justify. What this amount should be only the board of directors can determine.

The foregoing opinion is supported by the decision of the Supreme Court of the United States in the case of St. John *vs.* The Erie Railway Co., 22 Wal., 136.

W. W. MACFARLAND.

Hon. H. J. Jewett, president.

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NEW YORK, LAKE ERIE & WESTERN RAILROAD CO,
OFFICE OF THE GENERAL MANAGER,
NEW YORK, *December* 4, 1880.

Hon. H. J. Jewett, president.

SIR: The following report for the year ending September 30, 1880, is submitted:

The earnings were—

From general freights	$11,199,498 37	
" coal	3,191,616 96	
" passengers	3,682,951 18	
" mails	163,771 38	
" express	338,867 15	
" miscellaneous	116,403 82	
		$18,693,108 86

The expenses were—

For conducting transportation	$5,109,979 90	
" motive power	3,291,141 43	
" maintenance of cars	861,135 29	
" maintenance of way	1,938,715 41	
" general expenses	442,953 32	
		$11,643,925 35
Net		$7,049,183 51

As compared with the previous year there was an increase in earnings of $2,751.086.28, or 17.25 per cent.; in operating expenses an increase of $469,226.40, or 4.19 per cent., and in net earnings an increase of $2,281,859.88, or 47.86 per cent.

106 Included in the above are the earnings and expenses of the Lockport & Buffalo railroad, from Lockport to Tonawanda, 13 miles, which has been operated by this company during the year, and of the Buffalo & Southwestern railroad, from Buffalo to Jamestown, 68.4 miles, for the months of August and September.

The details of the sources of traffic and other statistics will appear in the report of the auditor.

Much progress has been made during the year toward bringing the road and equipment to a uniform standard gauge.

At the beginning of the year there were on hand 504 locomotives, viz.: 430 broad gauge and 74 standard gauge.

In the year 15 consolidated freight and 15 passenger locomotives have been leased of the Car Trust of New York No. 2, 11 built, and 10 rebuilt at the company's shops. 17 have been condemned and torn down, leaving the number on hand at the end of the year 528, of which 400 are of broad gauge and 128 standard gauge, in addition to the 11 acquired by the lease of the Buffalo & Southwestern railroad.

242 passenger and baggage cars and 4,817 freight cars have been brought to the standard gauge.

The number of cars on the road September 30, 1880, including those acquired with the Buffalo & Southwestern railroad, was as follows:

	Standard Gauge	Broad Gauge.	Total.
First-class passenger	145	90	235
Second class and emigrant	34	40	74
Inspection	2	1	3
Pay	2	--	2
Baggage, express, and mail	77	20	97
Milk	8	35	43
Box freight	10,773	1,042	
Box stock	308	28	
107 Slat stock	815		
Oil tank	131	140	
Flat	404	277	
Gondola	1,735	355	
Gondola dump	1,120		
Coal—8-wheel	174	2,131	
Coal—4-wheel, 2,097: equivalent to 8-wheel	75	973	
			20,481
Caboose—8-wheel	11	44	55
Caboose—4-wheel	48	131	179
Gravel		43	43
Derrick and tool	12	18	30

Of the foregoing 5,199 box freight and 300 gondola coal cars are leased of the New York Car Trust, and 2,209 box freight cars, 389 gondola coal cars, and 30 locomotives are leased of the New York Car Trust No. 2.

520 box freight cars, 385 stock cars, 750 gondola coal cars, 120 four-wheel coal cars, 2 caboose cars, and 6 locomotives are leased of other companies or individuals.

Upon the 36 locomotives and 9,489 cars leased with provision for purchase there has been paid in the year $621,010.56.

When the contracts already made for locomotives and cars are filled, there will be a total of about $5,100,000 to be paid in monthly, quarterly, and semi-annual installments, of which about $950,000 is to be paid in 1881.

The grading for second track on Buffalo division has been completed, except for three miles near Portage Bridge, and the track laid, and all but twenty-three miles of second track on that division is now in use.

108 The change in the line at Portage for a distance of three miles, whereby the ascending grade westward will be reduced from 53 feet per mile to 32 feet per mile, will be made early next season. By this improvement, and those that have been made in the line the past year, locomotives will be able to haul over the Buffalo division one-third more loaded cars than formerly.

The outer rail has been removed between East Buffalo and Suspension Bridge, 23¼ miles, and between Susquehanna and Carbondale, 36½ miles.

From Hornellsville to Dunkirk (128 miles) and from Carrollton to Buttsville (25 miles) the track was narrowed to standard gauge on

June 22, simultaneously with the completion of the third rail of the New York, Pennsylvania & Ohio railroad from Salamanca to Leavittsburg, and the narrowing of the rest of that road to a standard gauge, thus completing a uniform standard gauge route to the West by way of Salamanca.

There are at the end of the year 438 miles of road with three rails, of which 404 miles are double track and 34 miles single track; 260.5 miles of road broad gauge only, and 311 miles of road standard gauge only. Total length of road, including branches and leased roads, 1,009.5 miles.

The outer rail will be removed between Hornellsville and Buffalo by the early spring, and the track between Corning and Rochester and Attica will be narrowed to standard gauge, and a third rail laid between Lackawaxen and Honesdale, and Greycourt and Newburg, when the remaining eight-wheel broad-gauge cars will be brought to a standard gauge, by which we shall avoid the delay and loss consequent upon different gauges of cars.

The full advantage of the change of gauge of the road will not be realized until the locomotives are all brought to standard guage and the third rail removed.

109 36½ miles of new side tracks have been laid in the year.

The track and bridges are being steadily improved. Between Jersey City and Buffalo only 35 miles of track and between Honesdate and Dunkirk 29 miles are of iron rails.

3,430 lineal feet wooden bridges were replaced with iron.

The expenditures on account of construction, etc., in the year have been as follows:

For third rail		$35,152 43
Second track		833,236 97
Side and third track		275,152 59
Bridges		16,734 18
Engine-houses, machine-shops, etc., at—		
Buffalo	$49,699 79	
Bergen	13,670 85	
Dunkirk	9,378 38	
Miscellaneous	7,485 30	
		80,234 32
Machinery for shops		41,869 64
Stations and warehouses, at—		
Buffalo	$30,563 90	
Jersey City	21,119 13	
Hornellsville	24,300 00	
Miscellaneous	2,058 36	
		78,041 39
Narrow gauging of road		28,780 49
Telegraph line		14,253 00
Wharfing		8,370 41

Elevator at Buffalo			84,071 99
Coal trestles "			43,243 12
Lehigh docks "			92,851 07
Basin and warehouses, Jersey City			109,248 61
110 Real estate at Jersey City	$4,466 50		
" Buffalo	16,170 00		
Real estate at other places	2,909 48		
			$23,545 98
Right of way			8,579 10
Weehawken docks			2,429 57
Miscellaneous			7,194 41
Equipment, viz:			
Freight cars	$21,339 30		
Passenger "	22,036 63		
Narrow-gauging	99,807 72		
		$143,183 65	
Locomotives	$13,605 23		
Narrow-gauging	23,777 56		
		37,382 79	
Car Trust of New York and others for cars and locomotives		621,010 56	
			801,577 00
Four car floats			57,579 91
Steamboats			500 00
Branches:			
Northern Railroad of New Jersey		$3,485 59	
Paterson & Newark		1,703 09	
Hawley		3,798 55	
Honesdale		1,531 61	
Jefferson		10,456 64	
Suspension Bridge and Erie Junction		1,731 71	
Erie International		3,867 48	
Rochester & Genesee Valley		2,308 04	
Other branches		43,658 34	
			72,541 05
Total			$2,715,187 23

111 The amount paid from the assessment fund, in the year ending September 30, 1880, for improvements to the property, was $828,860.59.

The total amount of the assessment fund expended on improvements to September 30, 1880, has been $3,092,079.34, as follows:

For third rail			$1,207,429 20
For equipment, consisting of—			
Two car floats		$25,880 00	
Thirty-eight locomotives		313,500 00	
			339,380 00

For second track	1,034,297 25
For improvements at Buffalo, consisting of engine-house, machine shops, and freight-house	141,504 60
For grain elevator at Buffalo	203,973 16
For engine-house at Bergen	36,556 59
For ship basin and docks, Jersey City	98,938 55
For miscellaneous	29,999 99
Total	$3,092,079 34

The gratifying results of the year's business could not have been reached without the very considerable improvements to the property that have been already made.

Additional terminal facilities are essential to the more economical handling of our present business, and to provide for that which is pressing upon us.

The river frontage owned by the company at Weehawken should be fully developed, and very considerable additions should be made to our tracks and yards at Buffalo.

The present shops at Hornellsville, which, being old and of
112 wood, are of little value, and located where they greatly interfere with the proper arrangement of the yard, should be torn down, and new shops, suitable for the needs of that important point, should be erected upon ground which has been acquired for that purpose, and the yards should be rearranged and enlarged.

At Port Jervis better shop facilities are very much needed, and should be made at the earliest moment practicable.

A third track should be laid at intervals, so that freight trains can run with regularity and promptness, and at the same time be kept out of the way of passenger trains.

Very considerable addition to the number of passenger cars must be made to enable us to properly take care of the present passenger business and to increase it.

Our locomotives and freight and coal car equipment are being pushed to the utmost, and, to meet even the present demands, liberal additions should be provided at once. Such of the broad-gauge locomotives are as worth narrowing should be brought to the standard gauge as fast as practicable, so as to get rid of the expense consequent upon the double gauge. As many as 100 locomotives should be narrowed this year. The cost of narrowing is about $3,500 per locomotive.

With these and other improvements of less importance like favorable results as those which have followed the improvements already made may be confidently expected.

Respectfully,

ROBERT HARRIS,
General Manager.

113 *Report of the Auditor.*

NEW YORK, LAKE ERIE AND WESTERN RAILROAD CO.,
AUDIT OFFICE, NEW YORK, *December* 4, 1880.

Hon. H. J. Jewett, President:

I beg to present herewith the following statements, constituting my report for the past fiscal year, viz:

The profit and loss account, showing the operations of the road, its branches, etc.;

The condensed balance sheet, showing its financial condition as compared with the previous year;

The revised table of interest on funded debt for the fiscal years 1880 to 1884, inclusive;

The comparative profit and loss account for the years 1879 and 1880; and—

The usual statistics of the traffic compared with those of the previous year.

Very respectfully,

S. LITTLE, *Auditor.*

114 No. 1. —*Profit and Loss for Fiscal Year*

DEBITS TO REVENUE.

To *Working Expenses*—		
Conducting transportation	$5,109,979 90	
Motive power	3,291,141 43	
Maintenance of cars	861,185 29	
Maintenance of way	1,938,715 41	
General expenses	442,953 32	
		$11,643,925 35
Net earnings		7,049,183 51
		$18,693,108 86
To *Pavonia Horse Railroad*—		
Expenses	$21,118 36	
Interest on bonds	10,237 50	
	$31,355 86	
Earnings	23,769 46	
Loss		7,586 40
To *Unclaimed Baggage and Freight Department*—		
Expenses	$4,794 66	
Receipts	1,956 28	
Loss		2,838 38
To Brooklyn Annex—		
Expenses	$36,274 74	
Earnings	18,367 92	
Loss		17,906 82
To *Blake's Docks, Buffalo*—		
Expenses	$4,790 25	
Earnings	2,096 95	
Loss		2,693 30
To *Interest on Funded Debt*—		
First mortgage bonds, $2,411,000, at 7 per cent., currency	$168,770 00	
First mortgage bonds, $71,000, at 7¼ per cent., gold	5,147 50	
Second mortgage bonds, $2,152,000, at 5 per cent., gold, five months, to March 1, 1880	44,833 33	
Second mortgage bonds, $2,150,000, at 5 per cent., gold, seven months, to September 30, 1880	62,708 34	
Amounts carried forward	$281,459 17	$31,024 90

CREDITS TO REVENUE.

By *Earnings*—		
Freight	$11,199,498 37	
Coal	3,191,616 96	
Passenger	3,126,896 41	
Emigrant	556,054 77	
Mails	163,771 38	
Express	338,867 15	
Miscellaneous	89,033 82	
Rents	27,370 00	
		$18,693,108 86
		$18,693,108 86
By net earnings		$7,049,183 51
By *Pavonia Ferries*—		
Earnings	$265,651 43	
Expenses	216,318 40	
Profit		49,333 03
By *New York, Lake Erie & Western R. R. Co.'s Baggage Express*—		
Earnings	$70,051 15	
Expenses	61,455 42	
Profit		8,595 73
By *Weehawken Docks*—		
Earnings	$51,559 40	
Expenses	9,217 29	
Profit		42,342 11
By *Grand Opera House and Twenty-third Street Properties*—		
Rents	$34,226 46	
Expenses	25,987 07	
Profit		8,239 39
By *New York, Lake Erie & Western Elevator, (Buffalo)*—		
Earnings	$78,453 48	
Expenses	58,343 47	
Profit		20,110 01
By interest on securities		237,417 06
By sterling exchange		407 06
Amount carried forward		$7,415,627 90

DEBITS TO REVENUE.

Amounts brought forward	$281,459 17	$31,024 90
To third mortgage bonds, $4,852,000, at 7 per cent., currency	339,640 00	
Fourth mortgage bonds, $2,937,000, at 7 per cent., currency	205,590 00	
Fifth mortgage bonds, $709,500, at 7 per cent., currency	49,665 00	
Buffalo Branch mortgage bonds, $182,600, at 7 per cent., currency	12,782 00	
First consolidated mortgage bonds, $16,656,000, at 7 per cent., gold	1,165,920 00	
Second consolidated mortgage bonds, $24,400,000, at 6 per cent., gold, ten months, from December 1, 1879	1,220,000 00	
First consolidated funded coupon bonds, $3,699,236.10, at 7 per cent., gold	258,946 52	
Second consolidated funded coupon bonds, $8,597,400, at 5 per cent., gold	429,870 00	
		3,963,872 69
To *Interest on Long Dock Co. Bonds*—		
$3,000,000, at 7 per cent. per annum		210,000 00
To *Guaranteed Interest* other than the interest on the bonds of the company		131,928 05
To *Weehawken Docks, interest*—		
$920,760.40, at 7 per cent. per annum		64,453 24
To *Rentals of Leased Lines*—		
Paterson & Hudson R. R.	$48,400 00	
Paterson & Ramapo R. R.	30,000 00	
Hoboken Land and Improvement Co.—		
One month and three days, at $4,500 per annum	412 50	
Ten months and twenty-seven days, at $4,600 per annum	4,178 33	
Newburgh & New York R. R.	17,500 00	
Buffalo, New York & Erie R. R.	238,100 00	
Montgomery & Erie R. R.	21,000 00	
Goshen & Deckertown R. R.	17,500 00	
Hawley Branch	30,000 00	
Honesdale Branch	21,000 00	
Jefferson Branch	140,000 00	
Rochester & Genesee Valley R. R.	34,012 00	
Avon, Geneseo & Mount Morris R. R	15,000 00	
Buffalo, Bradford & Pittsburgh R. R.	40,600 00	
Amounts carried forward	$657,702 83	$4,401,278 88

Ending September 30, 1880—(Continued.) 117

CREDITS TO REVENUE.

Amount brought forward	$7,415,627 90
	$7,415,627 90

DEBITS TO REVENUE.

Amounts brought forward	$657,702 83	$4,401,278 88
To Lockport & Buffalo Railway—		
Three months' rental to September 30, 1880	5,250 00	662,952 83
To *Suspension Bridge & Erie Junction R. R.*—		
Rent 7 per cent. on $1,000,000 bonds	$70,000 00	
Less 30 per cent. of earnings	44,295 85	25,704 15
To *Paterson & Newark R. R.*—		
Rent 7 per cent. on $500,000 bonds	$35,000 00	
Less 35 per cent of earnings	23,672 67	11,327 33
To interest on loans, etc.		29,015 67
To interest on equipment		148,284 07
To interest on mortgages, etc.		22,797 88
To London office expenses		12,641 21
To taxes, State of New York		6,379 77
To taxes, State of Pennsylvania		19,576 36
To taxes, State of New Jersey		39,913 19
To expenses, countersigning bonds		18,816 33
To commissions and expenses for extending New York & Erie R. R. Second mortgage bonds		550 00
To commissions and expenses for extending New York & Erie R. R. Fourth mortgage bonds		146,850 00
To claims prior to October 1, 1879		78,919 52
To surplus for the year		1,790,620 71
		$7,415,627 90

Ending September 30, 1880. 119

CREDITS TO REVENUE.

Amounts brought forward	$7,415,627 90
	$7,415,627 90
By surplus	$1,790,620 71

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Dr. *No. 2.—Condensed Balance Sheet, September*

Accounts.	1879.	1880.	Increase.	Decrease.
Construction, main line	$548,381 19	$1,308,472 36	$760,091 17	
Third rail—general account	228,344 40	263,496 83	35,152 43	
Equipment	70,470 09	350,986 08	280,515 99	
Real estate	124,926 80	148,472 78	23,545 98	
Amounts expended out of the special fund for—				
Third rail	1,207,429 20	1,207,429 20		
Second track	491,860 28	1,034,297 25	542,436 97	
Improvements at Buffalo	67,071 05	141,504 60	74,433 55	
Engine-house at Bergen	19,698 30	36,556 59	16,858 29	
Equipment	339,380 00	339,380 00		
Elevator at Buffalo	89,870 00	203,973 16	114,103 16	
Ship basin and docks, Jersey City	17,909 93	98,938 55	81,028 62	
Miscellaneous	29,999 99	29,999 99		
Construction, branch lines	86,070 18	158,611 23	72,541 05	
Elevator at Buffalo, general account	37,425 17	7,394 00		30,031 17
Ship basin and docks, Jersey City, general account	82,602 86	110,822 85	28,219 99	
Lehigh docks, Buffalo		92,851 07	92,851 07	
Weehawken docks, construction	848 81	3,278 38	2,429 57	
Buffalo and Southwestern R. R.—improvement account		36,302 16	36,302 16	
Amounts paid on account of equipment	160,645 35	781,655 91	621,010 56	
Stocks of other companies	174,202 50	140,200 45		34,002 05
Bonds of other companies	226,024 60	273,819 60	47,795 00	
Amounts due by agents, other companies, and individuals on current accounts	1,841,986 01	2,729,148 61	887,162 60	
Materials and supplies on hand at shops and on road	875,731 14	1,123,542 31	247,811 17	
Cash on hand	155,196 21	186,580 89	31,384 68	
Cash in London to pay coupons	10,401 74	50,568 26	40,166 82	
Bills receivable	7,500 00	10,543 60	3,043 60	
The estate of the Erie Railway Co.	95,737,122 37	151,681,284 08	55,944,161 71	
	102,631,098 17	162,550,111 09	59,983,046 14	64,033 22
		102,631,098 17	64,033 22	
Net increase		$59,919,012 92	$59,919,012 92	

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30, 1879, *and September* 30, 1880. *Cr.*

Accounts.	1879.	1880.	Increase.	Decrease.
Common stock issued at this date	24,997,100 00	75,879,300 00	50,882,200 00	
Preferred stock issued at this date	2,151,700 00	7,367,700 00	5,216,000 00	
Funded debt as per statement No. 3	66,678,501 10	67,173,744 85	495,243 75	
Loans payable	300,000 00	200,000 00		100,000 00
Bills payable	182,763 51	67,500 00		115,263 51
Interest on funded debt (due and accrued)	588,965 70	1,213,648 71	624,683 01	
Rentals of leased lines, etc.	433,399 86	355,876 87		77,522 99
Amounts due to other companies and individuals on current accounts, consisting of—				
Pay rolls for September, payable in October	616,279 47	671,543 93	55,264 46	
Audited vouchers for supplies, etc, including Sept. vouchers	1,534,697 29	1,542,143 84	7,446 55	
Traffic balances, etc.	631,186 28	832,134 58	200,948 30	
Sundries	31,868 97	50,061 84	18,192 87	
Special fund received from trustees for improvement of the property	2,364,118 18			*2,364,118 18
Assessments on the common stock of the Erie Railway Co. ($4 per share)		2,791,424 00	2,791,424 00	
Assessments on the preferred stock of the Erie Railway Co. ($2 per share)		116,390 00	116,390 00	
Interest on assessments received on stock of the Erie Railway Co., and interest and profits on investments, sterling exchange, etc.		377,503 95	377,503 95	
Profit and loss	2,120,517 81	3,911,138 52	1,790,620 71	
	102,631,098 17	162,550,111 09	62,575,917 60	2,656,904 68
		102,631,098 17	2,656,904 68	
Net increase		$59,919,012 92	$59,919,012 92	

*Now represented in the assessment accnunts and income bonds.

122 No. 3.—*Revised Statement of Interest*

Bonds.	Principal.	Date of Maturity.	Rate.	Due.
First mortgage bonds	$71,000 00	May 1, 1897	7⅓ % gold	May & Nov.
" " "	2,411,000 00	" 1, "	7 % currency	" "
Second " "	2,152,000 00 to Mar. 1, '80	Sept. 1, 1919	5 % gold	Mar. & Sept.
" " "	2,150,000 00 from Mar. 1,'80	" 1, "	5 % "	" "
Third " "	4,852,000 00	Mar. 1, 1883	7 % currency	" "
Fourth " "	2,937,000 00	Oct. 1, 1880	7 % "	Apr. & Oct.
" " "	2,937,000 00	" 1, 1920	5 % gold	" "
Fifth " "	709,500 00	June 1, 1888	7 % currency	June & Dec.
Buffalo branch mortgage bonds	182,600 00	July 1, 1891	7 % "	Jan. & July.
	$13,313,100 00			
First consolidated mortgage bonds	16,656,000 00	Sept. 1, 1920	7 % gold	Mar. & Sept.
First consolidated funded coupon bonds	3,699,236 10	" 1, "	7 % "	" "
New second consolidated bonds—interest from December 1, 1879	24,400,000 00	Dec. 1, 1969	6 % "	June & Dec.
Second consolidated funded coupon bonds	8,597,400 00	" 1, "	5 % gold to June 1, 1883; 6 % gold from June 1, 1883	" "
Income bonds	508,008 75	June 1, 1977*		
Total	$67,173,744 85			

* "Interest payable at the rate of 6 per cent. per annum, or at such lesser rate for any fiscal year, as the net earnings of the company for that year, as declared by the board of directors, and applicable for that purpose, shall be sufficient to satisfy."

on Funded Debt (Fiscal Years). 123

1880.	1881.	1882.	1883.	1884.
$5,147 50	$5,147 50	$5,147 50	$5,147 50	$5,147 50
168,770 00	168,770 00	168,770 00	168,770 00	168,770 00
44,833 33				
62,708 34	107,500 00	107,500 00	107,500 00	107,500 00
339,640 00	339,640 00	339,640 00	339,640 00	339,640 00
205,590 00				
	146,850 00	146,850 00	146,850 00	146,850 00
49,665 00	49,665 00	49,665 00	49,665 00	49,665 00
12,782 00	12,782 00	12,782 00	12,782 00	12,782 00
$889,136 17	$830,354 50	$830,354 50	$830,354 50	$830,354 50
1,165,920 00	1,165,920 00	1,165,920 00	1,165,920 00	1,165,920 00
258,946 52	258,946 52	258,946 52	258,946 52	258,946 52
1,220,000 00	1,464,000 00	1,464,000 00	1,464,000 00	1,464,000 00
429,870 00	429,870 00	429,870 00	286,580 00	
			171,948 00	515,844 00
$3,963,872 69	$4,149,091 02	$4,149,091 02	$4,177,749 02	$4,235,065 02

124 No. 4.—*Comparative Statement of Profit and Loss for*

Credits.	
Earnings—main line and branches	
Working expenses	
Net earnings	
Pavonia ferries—earnings	
Pavonia horse railroad—earnings	
New York, Lake Erie and Western Railroad Company's Baggage Express—earnings	
Weekawken docks—earnings	
Grand Opera House and Twenty-third street properties—rents	
Unclaimed baggage and freight department—receipts	
Brooklyn annex—earnings	
New York, Lake Erie and Western Elevator (Buffalo)—earnings	
Blake's docks (Buffalo)—earnings	
Interest on securities	
Sterling exchange	
Gold premium	
Adjustment of interest on funded debt prior to October 1, 1878	
Total credits	
Debits.	
Pavonia ferries—expenses	
Pavonia horse railroad—expenses	
Pavonia horse rrilroad—interest on bonds	
New York, Lake Erie and Western Railroad Company's Baggage Express—expenses	
Weehawken docks—expenses	
Grand Opera House and Twenty-third street properties—expenses	
Unclaimed baggage and freight department—expenses	
Brooklyn annex—expenses	
New York, Lake Erie and Western Elevator (Buffalo)—expenses	
Blake's docks (Buffalo)expenses	
Interest on funded debt	
Long Dock Company bonds—interest	
Weehawken docks—interest	
Guaranteed interest, other than interest on bonds of the company	
Interest on loans	
Interest on mortgages, etc.	
Interest on equipment	
Rentals of leased lines	
Suspension bridge and Erie Junction railroad—rent	
Paterson and Newark railroad—rent	
Expenses for countersigning bonds	
London office expenses	
Commissions and expenses for extending N.Y. & E. R. R. second mortgage bonds	
Commissions and expenses for extending N.Y. & E. R. R. fourth mortgage bonds	
State of New York—taxes	
State of Pennsylvania—taxes	
State of New Jersey—taxes	
Brooklyn annex—expenses prior to October 1, 1878	
Interest on equipment prior to October 1, 1878	
Claims prior to October 1, 1879	
Total debits	
Surplus	

Fiscal Years ending September 30, 1879 *and* 1880. 125

1879.	1880.	Increase.	Decrease.
$15,942,022 58	$18,693,108 86	$2,751,086 28	
11,174,698 95	11,643,925 35	469,226 40	
$4,767,323 63	$7,049,183 51	$2,281,859 88	
237,357 51	265,651 43	28,293 92	
20,745 40	23,769 46	3,024 06	
57,730 73	70,051 15	12,320 42	
73,944 90	51,559 40		$22,385 50
	34,226 46	34,226 46	
2,570 47	1,956 28		614 19
2,488 40	18,367 92	15,879 52	
	78,453 48	78,453 48	
	2,096 95	2,096 95	
12,165 67	237,417 06	225,251 39	
2,254 55	407 06		1,847 49
58 50			58 50
3,996 40			3,996 40
$5,180,636 16	$7,833,140 16	$2,652,504 00	
$314,757 51	$216,318 40		$98,439 11
20,892 11	21,118 36	$226 25	
	10,237 50	10,237 50	
54,780 92	61,455 42	6,674 50	
19,724 37	9,217 29		10,507 08
	25,987 07	25,987 07	
3,798 68	4,794 66	995 98	
23,281 23	36,274 74	12,993 51	
	58,343 47	58,343 47	
7,647 10	4,790 25		2,856 85
2,047,712 89	3,963,872 69	1,916,159 80	
210,000 00	210.000 00		
64,453 24	64,453 24		
133,000 00	131,928 05		1,071 95
47,978 85	29,015 67		18,963 18
14,418 57	22,797 88	8,379 31	
65,892 95	148,284 07	82,391 12	
658,445 34	662,952 83	4,507 49	
40,914 99	25,704 15		15,210 84
15,589 31	11,327 33		4,261 98
17,799 50	18,816 33	1,016 83	
3,458 75	12,641 21	9,182 46	
109,524 04	550 00		108,974 04
	146,850 00	146,850 00	
	6,379 77	6,379 77	
6,104 51	19,576 36	13,471 85	
	39,913 19	39,913 19	
5,170 84			5,170 84
3,319 05			3,319 05
	78,919 52	78,919 52	
$3,888,664 75	$6,042,519 45	$2,153,854 70	
$1,291,971 41	$1,790,620 71	$498,649 30	

No. 5.—Earnings.

New York, Lake Erie & Western R. R. and Branches.

From—	1878–9.	1879–80.	Increase or decrease.	Per cent. increase or decrease.
General freight	$9,049,269 62	$11,199,498 37	Inc. $2,150,228 75	Inc. 23 7/10
Coal	3,184,211 37	3,191,616 96	" 7,405 59	" 2/10
Express	321,033 98	338,867 15	" 17,833 17	" 5 5/10
Passengers	3,118,943 75	3,682,951 18	" 564,007 43	" 18
Mails	162,569 24	163,771 38	" 1,202 14	" 7/10
Rents	25,511 57	27,370 00	" 1,858 43	" 7 3/10
Miscellaneous	80,483 05	89,033 82	" 8,550 77	" 10 6/10
Total earnings	$15,942,022 58	$18,693,108 86	Inc. $2,751,086 28	Inc. 17 2/10
Working expenses	11,174,698 95	11,643,925 35	" 469,226 40	" 4 2/10
Net earnings	$4,767,323 63	$7,049,183 51	Inc. $2,281,859 88	Inc. 47 8/10
Working expenses percentage to earnings	70	62	Dec. 8	Dec. 11 4/10

No. 6.—Expenses—Freight.

New York, Lake Erie & Western R. R. and Branches.

Department.	1878–9.	1879–80.	Increase or decrease.	Per cent. increase or decrease.
Conducting transportation	$3,660,968 63	$4,095,230 55	Inc. $434,261 92	Inc. 11 9/10
Motive power	2,582.373 22	2,628,644 49	" 46,271 27	" 6/10
Maintenance of way	1,619,198 58	1,454,036 56	Dec. 165,162 02	Dec. 10 2/10
Maintenance of cars	639,491 54	678,170 05	Inc. 38,678 51	Inc. 6
General expenses	295,205 26	332,214 99	" 37,009 73	" 12 5/10
Total	$8,797,237 23	$9,188,296 64	Inc. $391,059 41	Inc. 4 4/10

127 No. 7.—EXPENSES—PASSENGER.

New York, Lake Erie & Western R. R. and Branches.

Department.	1878–9.	1879–80.	Increase or decrease.	Per cent. increase or decrease.
Conducting transportation	$962,894 29	$1,014,749 35	Inc. $51,855 06	Inc. 5 4/10
Motive power	631,011 05	662,496 94	" 31,485 89	" 5
Maintenance of way	539,732 88	484,678 85	Dec. 55,054 03	Dec. 10 2/10
Maintenance of cars	145,421 76	182,965 24	Inc. 37,543 48	Inc. 25 7/10
General expenses	98,401 74	110,738 33	" 12,336 59	" 12 5/10
Total	$2,377,461 72	$2,455,628 71	Inc. $78,166 99	Inc. 3 3/10

No. 8.—TOTAL WORKING EXPENSES.

New York, Lake Erie & Western R. R. and Branches.

Department.	1878–9.	1879–80.	Increase or decrease.	Per cent. increase or decrease.
Conducting transportation	$4,623,862 92	$5,109,979 90	Inc. $486,116 98	Inc. 10 5/10
Motive power	3,213,384 27	3,291,141 43	" 77,757 16	" 2 4/10
Maintenance of way	2,158,931 46	1,938,715 41	Dec. 220,216 05	Dec. 10 2/10
Maintenance of cars	784,913 30	861,135 29	Inc. 76,221 99	Inc. 9 7/10
General expenses	393,607 00	442,953 32	" 49,346 32	" 12 5/10
Total	$11,174,698 95	$11,643,925 35	Inc. $469,226 40	Inc. 4 3/10

128 No. 9.—MILES RUN BY TRAINS.

New York, Lake Erie & Western R. R. and Branches.

By—	1878–9.	1879–80.	Increase or decrease.	Per cent. increase or decrease.
Passenger trains	3,192,618	3,280,456	Inc. 87,838	Inc. 2 7/10
Freight "	8,467,847	8,171,901	Dec. 295,946	Dec. 3 5/10
Switching "	2,301,504	2,526,836	Inc. 225,332	Inc. 9 8/10
Other "	212,554	314,683	Inc. 102,129	Inc. 48
Total	14,174,523	14,293,876	Inc. 119,353	Inc. 8/10

No. 10.—Traffic.

New York, Lake Erie & Western R. R. and Branches.

Description.	1878–9.	1879–80.	Increase or decrease.	Per cent. increase or decrease.
Number of passengers	4,894,527	5,491,431	Inc. 596,904	Inc. 12
Passengers carried one mile	149,115,718	180,460,204	" 31,344,486	" 21
Tons general freight	3,902,314	4,648,318	" 846,004	" 22 2/10
Tons coal	4,410,327	4,067,574	Dec. 342,753	Dec. 7 8/10
Tons general freight carried one mile	1,068,785,866	1,288,782,256	Inc. 219,996,390	Inc. 20 6/10
Tons coal carried one mile	500,436,551	432,329,839	Dec. 68,106,712	Dec. 13 6/10

129 No. 11.—Traffic Condensed, with Averages of Haul and Load.

New York, Lake Erie & Western R. R. and Branches.

Description.	1878–9.	1879–80.	Increase.	Per cent. Increase.
Number of passengers	4,894,527	5,491,431	596,904	12 7/10
Passengers carried one mile	149,115,718	180,460,204	31,344,486	21
Tons freight	8,212,641	8,715,892	503,251	6 1/10
Tons freight carried one mile	1,569,222,417	1,721,112,095	151,889,678	9 7/10
Averages.				
Tons freight per train	185	210½	25½	13 8/10
Miles hauled	191	197	6	3 1/10
Passengers per train	48	55	8	17
Miles hauled	30½	33	2½	8 2/10

The coal and other supplies transported for the company's own use amounted to 729,500 tons, thus swelling the aggregate tonnage for the year to 9,445,392 tons.

No. 12.—Earnings and Expenses Per Train Mile and Per Unit of Traffic.

New York, Lake Erie & Western R. R. and Branches.

Description.	1878–9.	1879–80.	Increase or Decrease.	Per Cent. Increase or Decrease.
Earnings per freight train mile	$1 44	$1 76	Inc. $0 32	Inc. 22 7/10
Expenses " "	1 04	1 12	" 08	" 7 7/10
Net earnings " "	40	64	" 24	" 60
* Earnings per passenger train mile	1 13	1 28	" 15	" 13 3/10
Expenses " "	74	75	" 01	" 1 2/10
Net earnings " "	39	53	" 14	" 35 9/10
	Cents.	Cents.	Cents.	
Earnings per ton per mile, merchandise freight	.850	.869	Inc. .019	Inc. 2 2/10
Earnings per ton per mile, coal freight	.640	.738	" .098	" 15 3/10
Earnings per ton per mile, on all freight	.780	.836	" .056	" 7 2/10
Expenses " " " "	.561	.534	Dec. .027	Dec. 4 8/10
Net earnings " " " "	.219	.302	Inc. .083	Inc. 38
Earnings per passenger per mile	2.091	2.041	Dec. .050	Dec. 2 4/10
Expenses " "	1.594	1.361	" .233	" 14 6/10
Net earnings " "	.497	.680	Inc. .183	Inc. 36 8/10

* Including mails and express.

130–131 SCHEDULE B.

Annual Report of H. J. Jewett, receiver of the Erie Railway Company, to the board of directors, for the year ending September 30, 1876.

132 OFFICE OF THE ERIE RAILWAY COMPANY,
December 21, 1876.

The report of the receiver having been read to the board, it was
Ordered, That the same be printed for distribution among the shareholders.

A. R. MACDONOUGH,
Secretary.

133 OFFICE OF THE ERIE RAILWAY COMPANY,
NEW YORK, *December* 12, 1876.

To the board of directors of the Erie Railway Company:

The accompanying reports of the general superintendent and the auditor give in detail the condition and operations of the road for the fiscal year ending September 30, 1876:

The gross earnings amounted to	$15,852,461 14
The operating expenses, including $580,671.54 for new equipment, amounted to	12,231,201 78
Leaving applicable to the payment of interest, and for other purposes	3,621,259 36
The net receipts from other sources amounted to	319,181 16
Total amount available for disbursement	$3,940,440 52

The gross earnings, as compared with the preceding year, show a decrease of $1,024,397.46.

The amount derived from the transportation of general freight was $230,125.37 in excess of the preceding year.

The decrease in the coal traffic is more than equal to the entire decrease in the gross earnings; which decrease, however, added to the decrease in the other branches of the service, overcomes the increase from general freight, and leaves a total deficiency of the amount above stated.

The causes which have seriously affected the coal earnings of this company have operated with like serious effect upon all the
134 coal roads with which it has connection. It is not believed, however, that these causes are of a permanent character. When business, and the manufacturing interests which obtain their supplies from the coal fields tributary to our road, revive, there is no doubt but that the coal traffic of the road will resume its former standard, and be as productive in the future as it has been in the past.

The average rate during the fiscal year of 1875 was extremely low. The general depression of business, with the then prevailing competition, resulted in a reduction of rates to an extent not before anticipated, and below the point which it was supposed would be reached during any future year. But had the rates of that year, as low as they were, prevailed during the fiscal year just closed, the earnings of the company from its freight traffic would have been $1,144,475.11 more than was realized, and, notwithstanding, the falling off in the coal and other branches of traffic would have been in excess of the earnings of the preceding year.

Instead of the rates being advanced early in the winter of 1875–6, as was anticipated, the competition between the Grand Trunk and the New York Central Railroad Companies, with their connections, for the New England traffic, became so active as to involve, more or less, all the roads leading to New York and the other Atlantic cities. This competition continued, and gave rise to other questions, which should, and under ordinary circumstances would, have been adjusted without seriously complicating or disorganizing the relations or business arrangements then existing.

As negotiations are now pending for the settlement of the points in controversy, and with every prospect of success, I will not further discuss the question, or attempt to show upon whom or upon which

company or companies the responsibility rests for a competition which has proved so disastrous to all interested. I can, however, safely say that the responsibility does not rest with this company or its managers.

By a reduction in the expenses and other previously fixed charges, notwithstanding the decrease in earnings, the actual deficit in the amount required to meet the obligations of the company is less than that of the preceding year, the deficit for the year 1875 being $1,353,164.77, and for the year just closed $1,229,630.19.

The auditor's report shows in detail the application made of the balance remaining after the payment of current expenses.

135 *Coal Property.*

The amounts advanced to the coal companies were necessary to protect large investments in the property thereof, made by this company previous to the date of the appointment of the receiver.

National Stock Yard Company.

The amounts shown in the auditor's report as paid Charles Robinson, and paid on account of the stock, bonds, and coupons of the above-named company, were deemed necessary to protect this company in the use of the stock yards. The stock yard property was represented by an independent company, having no interest in the railway, and instead of the yards being an aid to the railway, in securing and protecting its live-stock business, they were regarded as being an obstruction by those more directly connected with that branch of the traffic. They were a necessity to the railway, and it was, therefore, considered wise and proper that the railway company should secure, at least, a sufficient amount of the stock of the Stock Yard Company to control its organization and management. In doing this, the course of conduct pursued was to purchase the stock, paying to the holders the actual cost thereof to them, as paid by them to the company at its organization, and in consideration for which the stock was issued. The property was a valuable one, independent of the purposes for which it was held. It was encumbered by several mortgages, one of which was to secure bonds issued, and to be issued, amounting to $1,000,000, and was represented by a stock interest of 10,000 shares, of the par value of $1,000,000. This company owned $655,000 of the bonds and $232,200 of the stock. By the payment of the amounts named it acquired $549,500 of the stock and $10,000 of the bonds, thus giving it the absolute control of the property, which, instead of remaining an obstruction to the business of this company, now contributes to that business, and has been leased for $65,000 per annum, the lessees guaranteeing to this company its proportion of the live stock delivered at the New York market.

Purchase of Union Steamboat Company Stock.

The Union Steamboat Company is an organization created and empowered to own and operate a line of steamers on the lakes.

136 It owns a fleet of seventeen steamers. The amount of its capital stock is 10,000 shares, of the par value of $1,000,000, of which this company owned $869,000.

The policy of that company has been to appropriate its net earnings from year to year to the increase of its equipment of steamers. The outstanding stockholders not being content with this mode of disposing of the surplus revenues—they having no interest in the railway company—demanded that such net profits should either be divided in the shape of dividends or that the railway company should relieve them of the stock which they owned.

The latter course was thought to be the wiser one to pursue; to accomplish which the amount named in the auditor's statement was used. The number of shares purchased was 1,250, leaving 60 shares of unissued stock in possession of the Union Steamboat Company.

Buffalo, New York, and Erie Bonds.

The Buffalo, New York, and Erie road extends from Corning to Buffalo, connecting the main line of this road with the latter point and with the roads diverging therefrom.

It had been leased by this company subject to the then existing mortgages, the preservation of which lease was a necessity to the future business and prosperity of this company. One of the mortgages had matured, and the holders of the bonds secured thereby demanded immediate payment, to compel which proceedings for foreclosure had been instituted.

To protect the lease it became necessary to take up the bonds secured by the mortgage upon which said proceedings were based, to do which the amount named by the auditor was required, and was so appropriated; the bonds, under the order of the court, being held for the benefit of this company.

Suspension Bridge and Erie Junction R. R. Stock.

The Erie Company is the lessee of the Suspension Bridge and Erie Junction railroad, extending from East Buffalo to Suspension Bridge. By the terms of the lease it guaranteed the interest upon the bonds of that road and a divident of seven per cent. per annum upon its stock.

This branch is, in many respects, a necessity to the Erie
137 railway, being its only direct connection with the great Western Railway of Canada, and without which it could only reach that road over the International bridge at Buffalo, a property owned and controlled by the Grand Trunk company. The rental provided for in the lease was largely in excess of the actual earnings of the road. In the event of the continuance of the lease the stockholders of that company had a claim upon this for their dividends. It was not thought best to at once exercise the power which perhaps the law vested in the receiver, with the permission of the court, to abandon the lease, but rather, if it could be done at a reasonable expense, to reduce largely the rental, leaving to those

who might hereafter become the proper owners of the Erie railway a majority of its stock and at liberty to dispose of the lease as in in their judgment might be deemed best.

The capital stock of that company amounted to 5,000 shares, of the par value of $500,000, of which the Erie Company held 1,753 shares. By the investment of the amount named in the report of the auditor this company acquired the additional number of 537 shares, which, with the number previously owned and since acquired in the adjustment of other accounts, gave it the control of that company.

Jefferson Car Contract.

The amount paid to the Jefferson Car Company was in settlement of the relations between that company and this. A contract was made some years since with that company, by which it undertook to place upon the road fifteen hundred four-wheeled coal cars, upon condition that such cars be kept in repair, their number maintained, and there be paid for their use one cent per mile for each car. This company assumed such obligations, and guaranteed that the earnings of such cars on mileage account should be equal to $10,500 per month or $126,000 per annum.

Default having been made in some of these payments, a suit had been instituted by the Car Company upon its contract, and a judgment for $179,879.45 obtained. This company held 2,784 shares of stock in the Car Company, which stock, however, was of no value independent of the cars owned.

In view of all the facts it was thought advisable to become the owners of the cars, cancel the car contract, and thus be relieved of the payments involved in its continuance; to accomplish
138 which purposes an agreement was entered into with the Car Company, by which this company surrendered all its stock and agreed to pay in instalments, with interest from the date of such settlement, the sum of $300,000, in consideration of which the Car Company satisfied its judgment, cancelled its contract, and delivered to the Erie Company its cars.

The foregoing comprise the principal payments made on accounts other than those involved in the immediate management of the property of the company, its improvement, and the payment of its fixed liabilities. They were all made by the express authority of the court after a consideration of all the facts, and after such facts and the proposed action had been submitted to and approved by your board.

Floating Debt.

The floating debt of the company has been reduced in the sum of $974,621.44 since the date of appointment of receiver.

Condition of the Property.

The report of the general superintendent explains, in detail, the condition of the road and its equipment. However anxious its managers

may be to economize, and however diligent they may be in avoiding all extravagant and unnecessary expenditures, the road can never be worked with the same degree of economy as it might be were the difficulties pointed out remedied. Additions have been made to the equipment, in making which a uniformity of pattern and plans has been observed. Improvements have also been made to the track, as will appear in detail in the report of the general superintendent. These expenditures, although not chargeable to revenue, were, as will appear from the report of the auditor, paid therefrom.

In estimating for the amount of steel required to lay the third rail between Waverly and Buffalo the side tracks were included, and the requisitions for the rail were made accordingly.

In laying the sidings, however, iron was substituted for steel, by which means two thousand tons of the steel were rendered available, and were used in repairs of road, as mentioned by the general superintendent.

The accompanying statement of Chief Engineer Chanute contains an estimate of the work needed to be done to place the road
139 in a condition for earning to its utmost capacity, and upon the same advantageous terms as are enjoyed by its competitors. These estimates are, no doubt, based upon the supposition that the work is to be done independently of the daily operations of the road. Doubtless, in the course of doing the work—if its prosecution should be determined upon—the amounts named could, in many respects, be reduced, by the service being rendered in connection with the daily working of the road, without seriously increasing the operative expenses of the company.

As the work progresses, also, changes in its character, in the amount required, and in the cost thereof could, no doubt, be wisely made, increasing in some particulars and decreasing in others. As a whole, however, I think the estimates are substantially correct. Even if the full amount of work proposed could not be done, if sufficient means could be provided for completing the double track, laying the third rail, increasing the equipment, and remedying the difficulties which exist in that at present in use, together with some of the proposed terminal facilities, the capacity of the road to earn at a largely reduced expense would be greatly increased, and it would probably be able out of its earnings, in addition to discharging its fixed obligations, to make the balance of the improvements required.

Reorganization.

An effort is being made by a committee of the bond and share holders in Europe to provide the amount required for these improvements by a funding of a portion of the mortgage coupons and by contributions from the shareholders.

I cannot too strongly commend to the members of the board that they give their hearty co-operation to this or some other mode for providing the means needed for these improvements. Their necessity, their importance, and the ability of the company to much

more than provide for the interest upon the increased debt which such provision will involve cannot be doubted by any one, especially if it be borne in mind that the actual cost of transferring the traffic now moving over the road from and to its connections, rendered necessary because of its exceptional gauge, would, of itself, be more than equal to the interest upon whatever debt it might be necessary to incur in the completion of the third rail.

I beg to repeat that my faith in the value of the Erie road
140 and property has not changed, but, on the contrary, my every-day experience strengthens the conviction that it needs only the succor and support of its owners to make it, in point of importance, of value, and of productiveness, equal to any of the trunk lines, and that if thus supported and completed it will not only be able to promptly meet its fixed obligations, but would be equal to the payment of regular dividends upon a properly adjusted stock basis.

All of which is respectfully submitted.

H. J. JEWETT, *Receiver.*

141 *Report of General Superintendent.*

H. J. Jewett, Esq.,

President and receiver Erie Railway Company.

SIR: I beg respectfully to submit the following report of the operations of the road for the fiscal year ending September 30th, 1876:

The freight tonnage for the year ending September 30th, 1876, was 5,972,818 tons, or 267,125 less than for the previous year.

The decrease was altogether in the coal trade, which fell off 544,923 tons, the general business showing an increase of 277,798 tons, and the total of all freight moved one mile an increase of 23,813,871 ton-miles. The passenger business shows a like result in the decrease of the number of passengers, 10,024, an increase of passenger mileage of 7,677,991 miles.

The working expenses for the year were $447,929.17 less than the preceding year.

Maintenance of Way.

There have been used in the repairs of track during the year $9{,}464\frac{790}{2240}$ tons of steel rails, $7{,}523\frac{470}{2240}$ tons of rerolled iron rails, and 606,199 cross-ties.

When you took charge of the property in July, 1874, there were but $176\frac{25}{100}$ miles of steel rails in the track. There are now $340\frac{97}{100}$ miles; an addition of $164\frac{72}{100}$ miles, or 93.45 per cent. The steel is located as follows:

Division.	Miles July 1st, 1874.	Miles laid July 1st, 1874, to Sept. 30th, 1875.	Miles laid Sept. 30th, 1875, to Sept. 30th, 1876.	Total miles steel September 30th, 1876.	Miles of main track, not including br'ches.	Percentage laid in steel.
Eastern	45.	35.79	57.12	137.91	174.50	79.
Delaware	68.	26.01	17.05	111.06	165.50	67.10
Susquehanna	11.75	2.69	11.45	25.89	257.75	10.04
Western	1.	0.76		1.76	128.	1.38
Buffalo	50.50	3.53	10.32	64.35	130.	49.50
Rochester					128.75	
	176.25	68.78	95.94	340.97	984.50	34.63

142 The amount of rails of all kinds placed in the track each year since 1868 is as follows:

Year.	Number of tons.
1869	$34{,}695^{909}$
1870	$26{,}441^{160}$
1871	$23{,}969^{1440}$
1872	$20{,}174^{2069}$
1873	$25{,}743^{1193}$
1874	$13{,}858^{360}$
1875	$19{,}070^{268}$
1876	$16{,}988^{20}$

It will be observed that in the fiscal year ending September 30th, 1874, there were but $13{,}858^{360}$ tons of rails replaced or about one-half the usual annual quantity. This deficit had to be made good, as far as possible, in the subsequent two years, in addition to the wear of that time.

The total amount laid in 1875 and 1876 is less than previous years, but your adoption of the use of steel rapidly made the requirements less. The condition of the track is about the same as at the date of last report, except so far as improved by the additional quantity of steel rails. New iron turn-tables have been put in at Buffalo, Hornellsville, and Attica during the year.

Some considerable additions have been made to the drainage. The ballast has not at any time been sufficient in quantity or of approved quality, and is now very much worn and in need of renewal. The track will require for its proper maintenance during the current year 9.400 tons steel rails, 8,500 tons rerolled iron rails, and 550,000 cross-ties.

The quantity of steel above named will be sufficient to complete the main track with continuous steel rails from Jersey City to Susquehanna, a distance of 191½ miles. The propriety of substituting steel for rerolled iron rails west of Susquehanna is respectfully suggested.

It would tend greatly to the immediate economy and promptness of moving trains if the double track were extended from Canisteo to Adrian, on the Susquehanna Division, a distance of six miles, as it would afford at once relief to the Hornellsville yard, now overtaxed with the terminal of three divisions.

Also from Pine Grove to Narrowsburg, six miles, and from Stockport to Lordville, on the Delaware Division, five and three-quarter miles.

143 *Bridges.*

During the year the following wooden bridges have been renewed with iron structures at a total cost of $97,137.27, including repairs to masonry:

Eastern division	Bridge No.	3½	41 feet span.
"	"	12	31 "
"	"	30	42 "
Susquehanna division	"	13	41 "
"	"	17	35 "
"	"	47	35 "
"	"	55	107½ "
"	"	69	3 spans, 147½ feet each.
"	"	76	" 87½ "

Two of the three high trestles on the Jefferson branch, Delaware division, have been rebuilt, and work is in progress on the remaining one.

Of the two hundred and thirty-one bridges exceeding twenty feet span, on the road and branches, fifty-eight are now of iron, and all the remainder are of wood, some of which were last rebuilt in 1862. The following should be rebuilt in 1877:

Eastern Division.

Number.	Location.	Length.	Cost.
No. 2	Hackensack draw	64 feet span	$2,000 00
" 3	Newburgh branch	132 "	6,740 00
" 7	do	119 "	5,205 00
" 2	Newark branch	2 spans, 143½ feet each.	7,659 00
" 4	Pine Island branch	30 feet span	700 00
" 5	" "	50 "	1,541 00
Total			$23,845 00

144 *Delaware Division.*

Number.	Location.	Length.	Cost.
No. 3	Highway bridge	32 feet span	$580 00
" 9	Delaware river	1 span, 96 feet,	
" 9	"	1 " 157 "	53,791 00
" 9	"	1 " 152 "	
" 9	"	1 " 105 "	
" 16½	Greer's creek	30 feet span	1,390 00
" 20	Highway bridge	22 "	580 00
" 26	Rowland's Hawley brh	20 "	801 00
" 27	" "	25 "	882 00
" 29	Millville	80 "	2,889 00
Total			$60,913 00

Susquehanna Division.

Number.	Nearest Station.	Length.	Cost.
No. 56	Southport	116 feet span,	$22,723 20
" 56	Southport	116 "	
" 61	Big flats	59½ "	5,155 18
" 12	Kirkwood	34 "	2,139 84
" 18	Binghampton	44 "	2,768 64
" 30	Hooper, 2 spans	23 "	3,077 54
" 3	Susquehanna	40 "	2,649 92
" 4	Great Bend	39½ "	2,649 92
" 42	Waverly	48 "	3,471 36
" 40	Barton	29 "	1,832 12
" 70	Corning	27½ "	1,696 76
" 9	Great Bend	70 "	6,143 68
" 44	Waverly, 2 spans	59 "	9,403 68
" 45	Waverly, 2 spans	38½ "	5,620 48
" 21	Binghampton	Culvert wanted	2,460 00
" 53½		16½ feet span	225 00
" 67¾	Big flats	37½ "	1,500 00
Total			$73,517 32

145 *Western Division.*

Number.	Nearest station.	Length.	Cost.
No. 21	Olean, east	141 feet span	$6,619 00
" 31	Great Valley	60 "	1,766 00
" 40	Little Valley	3 sps. 20 ft. each	1,401 00
" 48	Sheridan	" 35 "	2,950 00
" 54	Dunkirk	" 20 "	1,401 00
Total			$14,137 00

Buffalo Division.

Number.	Nearest station.	Length.	Cost.
No. 6	Canaseraga	80 feet span	$3,200 00
" 8	Garwoods	60 "	2,100 00
" 14	Nunda	Culvert wanted	26,000 00
Total			$31,300 00

Rochester Division.

Number.	Nearest station.	Length.	Cost.
No. 14	Wallace	93 feet span	$4,750 00

Engine Houses.

There are fourty-four engine houses on the road and branches, with stalls for three hundred and twenty-one engines; but as some of them are at the wrong points, and there are four hundred and sixty-nine engines on the line, many of these remain out of doors at night, summer and winter. Most of the engine houses are of wood, and in very combustible condition.

146 *Station Houses.*

The station houses at Harrison street, Passaic, Lake View, Sufferns, Turner's, Owego, and at Avon have been burned down during the last three years, and have not been permanently rebuilt.

There are a number of houses at other points which are worn out and require renewal. The principal are local station Jersey City, passenger houses at Paterson, Binghamton, Attica, and Buffalo.

Third Rail.

A third rail to form a gauge of 4 feet 8½ inches was laid between West Junction and East Buffalo, and opened for business on the 1st of June last.

The cost of this rail, with the necessary fastenings, frogs, spikes, etc., put down in the track, was $1,060,032.18.

This forms a continuous connection via the Lehigh Valley railroad from Philadelphia and the anthracite coal regions of Pennsylvania to Buffalo and the West. The business on this new line has been good, and bids fair to be permanent and profitable.

Bradford Branch.

The development of the oil territory on the line of the Bradford Branch has so far increased the business on that road that the revenue thereon is now something more than the working expenses.

The business is greater than that of the previous year by 280 per cent., mostly in the last seven months.

There are now down and in progress about three hundred wells in the vicinity of the road; most of those completed are producing oil in paying quantities, and promise to be permanent.

Some needed improvements in the way of side tracks and depots are required to accommodate the traffic.

The Elmira and State Line Railroad Company have connected their track with our road at Southport Junction, near Elmira. This road affords an additional outlet to the coal from the Blossburg region, and it is expected will afford additional traffic to our line as well as lessen the cost of coal used in our service.

147 In and about New York harbor there have been no important changes during the year. The docks and appurtenances leased from the city, on the New York side of North river, and of the Jersey Shore Improvement Company, on the Jersey City side, have become depreciated from age, and negotiations are in hand looking to obtaining needed improvements to afford proper facilities for our business. We have acquired by lease an additional pier—No. 7—on the East river, and have covered pier No. 8, East river, with a substantial iron shed, to better accommodate the flour trade, at a cost of $7,929.72.

The tugboat "Governor King" has been replaced by a new boat, the "Governor Morgan," using the engines and machinery of the former in the latter. Two additional car floats were purchased at a cost of $30,364.49, to transfer cars to the new station established at Williamsburgh, principally to accommodate the sugar and cooperage business at that point.

Motive Power.

During the year twenty (20) first-class locomotives were purchased of the Brooks Locomotive Works at a cost of $196,000, and four (4) new locomotives of the Mogul pattern were constructed in the company's shops at Susquehanna, at a cost of about $44,000. These are the only new locomotives placed in the revenue service on the line of the road since August, 1872, and have not made good the depreciation of the intervening period.

Notwithstanding the addition of twenty-four (24) new locomotives during the year, we have but eight (8) additional numbers, sixteen (16) having been condemned and destroyed. Since the date named (August, 1872), and prior to 1874, six (6) new switching engines had been purchased and are in use in the yards; also three (3) narrow-gauge engines purchased of the New York, Boston and Montreal railroad, used in switching at Buffalo and on the Suspension Bridge branch, and one narrow-gauge engine purchased in 1875 for the International bridge branch.

Of the four hundred and sixty-nine (469) locomotives owned by the company, one hundred and sixteen (116) are inside connected or crank engines, which are more expensive to keep in repair than the modern patterns. The locomotives embrace eighty-three (83) different varieties, which fact, obviously, largely increases the expense of maintenance, requiring a corresponding amount of special
148 patterns, tools, and materials. Of the forty-five (45) locomotives on the Western Division, thirty-six (36) are of the standard pattern, and the cost of repairs on that division shows 4.41 cents per mile run, while on the whole road, including that division, the cost was 7.05 cents per mile. This economy of repairs is obtained from the uniformity of the engines, and clearly proves the importance of adhering to the standard in all future additions.

The engine-houses and stalls are quite insufficient for sheltering the locomotives, and consequently during the winter months the cost of their care is increased.

Cars.

There have been built during the year in the company's shops, fifty-nine (59) new passenger cars and ten (10) new baggage and express cars. Of these forty-three (43) passenger cars, four (4) baggage, and two (2) express cars are additions made to these classes of cars during the year, the entire cost of which has been charged to the expenses.

Of all classes of freight cars two hundred and eighty-six (286) (fifty of which were four-wheeled coal-cars) were destroyed.

There were built in the company's shops two hundred and forty-seven (247); purchased, seventy-eight (78); increasing the total number of freight cars by sixty-three (63).

In the freight-car equipment are two hundred and thirty (230) varieties, many of them differing in their essential parts; as, for example, nineteen different journal bearings, fifty-three journal boxes, twenty-seven drawheads, and fifty-two break shoes. This involves

the necessity of carrying a large stock of material at the respective shops, and largely increases the cost of current repairs.

The equipment of box cars is entirely inadequate to the demands of the traffic, and at certain periods of the year the revenue of the company could be increased if we could command additional cars.

This business is not of a character that, so far as this company is concerned, can be distributed over more time, and thus keep the cars more regularly and constantly employed, but is mostly competitive, and is taken by other lines, our proportion being limited by the supply of box cars.

The Rochester Division was during the year placed under the charge of the superintendent of Buffalo Division, dispensing with the superintendent's office at Avon.

149 I cannot neglect this opportunity to refer to the necessity that exists for some important modifications of the property of the company. You are struggling to compete for a common business with parallel lines of railways having double tracks of steel rails, an abundant equipment, adequate shops, and convenient depots for the transaction of their business; while you are limited by a single track on a large portion of your road, the shops inconvenient in arrangement and insufficient in capacity, many miles of iron rails that rapidly fail under the heavy traffic, and damage by their imperfections their rolling stock, which is in itself quite inadequate when all of it is kept in the service. The exceptional gauge is also an element of constant cost, while it also largely tends to limit the amount of the revenue by limiting the amount of property that will be entrusted to you for transportation while the possibility of transfer exists.

Estimates of the cost of this undertaking have been prepared in detail from time to time, and while the amount of money required is large, it is confidently believed that the return from the investment will be more than ordinarily remunerative.

Very respectfully,

E. S. BOWEN,
General Superintendent.

General Superintendent's Office, New York, Dec. 5, 1876.

150 Accounting Department of the Erie Railway Company.
H. J. Jewett, Receiver.

Report of the Auditor.

AUDIT OFFICE, NEW YORK, *December* 1, 1876.

Hon. H. J. Jewett, Receiver.

DEAR SIR: I beg to present herewith my report of the results growing out of the operations of this road, its branches, etc., for the year ending September 30th, 1876, together with a summary of your other financial transactions as receiver during that period.

DR. STATEMENT No. 1.—*Profit and Loss for Fiscal Year*

DEBITS TO REVENUE.

To *Working Expenses of Erie Railway and Branches:*			
Conducting transportation		$4,436,652 91	
Motive power		3,638,900 95	
Maintenance of cars		1,235,606 16	
Maintenance of way		2,437,429 96	
General expenses		482,611 80	
			*$12,231,201 78
" Net earnings			3,621,259 36
			$15,852,461 14
To *Expenses of Pavonia Ferries, etc.:*			
Pavonia Ferries		$197,813 42	
Pavonia Horse R. R.		26,904 14	
Erie Baggage Express		58,420 60	
Weehawken docks		37,061 77	
Grand Opera House property		44,182 72	
Unclaimed baggage and freight department		3,740 38	
			$368,123 03
" Net earnings			3,940,440 52
			$4,308,563 55
To *Interest on Funded Debt, being paid by the Receiver on—*			
1st mortgage bonds, $2,412,000, 7 % currency	$168,840 00		
1st mortgage bonds, $71,000, 7 gold	5,147 50		
2d mortgage bonds, $2,174,000, 7 % currency	152,180 00		
3d mortgage bonds, $4,852,000, 7 % currency	339,640 00		
4th mortgage bonds, $2,937,000, 7 % currency	205,590 00		
Buffalo Branch bonds, $182,600, 7 % currency	12,782 00		
		$884,179 50	
Carried forward		$884,179 50	

* This amount includes $580,671.54 for new equipment to replace old numbers, viz:

Renewals of locomotives	$234,544 74
" " passenger and baggage cars	231,135 75
" " freight cars	114,991 05

Ending September 30th, 1876. 152

CREDITS TO REVENUE.

By *Earnings of Erie Railway and Branches:*		
From gen'l freights	$8,252,783 95	
" coal do	3,177,145 75	
" passengers	3,427,626 45	
" express	398,882 94	
" mails	400,077 09	
" miscellaneous	135,087 22	
" rents	60,857 74	
		$15,852,461 14
		$15,852,461 14
By net earnings		$3,621,259 36
Earnings from other sources:		
From Pavonia Ferries	$234,286 08	
" Pavonia Horse R. R.	21,273 18	
" Erie Baggage Express	70,228 40	
" Weehawken docks	50,509 20	
" Grand Opera House property rents	26,526 82	
" unclaimed baggage and freight dep't	2,249 60	
		$405,073 28
" interest on securities		281,260 65
" Buffalo, Bradford and Pittsburgh R. R. royalty on oil		970 26
		$4,308,563 55
By net earnings		$3,940,440 52

Carried forward $3,940,440 52

DR. STATEMENT No. 1—Continued.—*Profit and Loss for*

DEBITS TO REVENUE.

Brought forward		$884,179 50	
To *Interest on Funded Debt in Default on*—			
5th mortgage bonds, $709,500, 7%, currency	$49,655 00		
Sterling mortgage bonds, $4,580,000, 6%, gold	274,800 00		
Consolidated mortgage bonds, $12,076,000, 7%, gold	845,320 00		
Convertible mortgage bonds, $10,000,000, 7%, gold	700,000 00		
Second consolidated bonds, $14,400,000, 7%, gold	1,008,000 00		
		2,877,785 00	$3,761,964 50
To Long Dock Company bonds. Interest $3,000,000			210,000 00
To *Interest on Boston, Hartford, and Erie R. R. Bonds, Guaranteed to*—			
Delaware and Hudson Canal Co. $1,500,000		105,000 00	
Weehawken Docks 400,000		28,000 00	133,000 00
To Weehawken docks. Interest on $920,760 40			64,453 24
To interest on loans, etc.			156,007 50
To interest on mortgages			29,175 60
To gold premium			3,640 33
To *Rentals of Leased Lines*—			
Paterson and Hudson R. R.		48,400 00	
Paterson and Ramapo R. R.		30,000 00	
Hoboken Land and Improvement Co.		4,500 00	
Newburgh and New York R. R.		17,500 00	
Buffalo, New York and Erie R. Currency	$223,960 00		
Gold	14,140 00		
		238,100 00	
Del., Lack., and Western R. R. Rent of track		8,000 00	
Hawley Branch		35,000 00	
Honesdale Branch		21,000 00	
Jefferson Branch		140,000 00	
Rochester and Genesee Valley R. R.		34,012 00	
Buffalo, Bradford, and Pittsburgh R. R.		40,600 00	
Montgomery and Erie R. R.		25,000 00	
Goshen and Deckertown R. R.		21,500 00	
Carried forward		$663,612 00	$4,358,341 27

Fiscal Year Ending September 30th, 1876. CR.

CREDITS TO REVENUE.

Brought forward	$3,940,440 52
Carried forward	$3,940,440 52

DR. STATEMENT No. 1—Continued. *Profit and Loss for*

DEBITS TO REVENUE.

Brought forward	$663,612 00	$4,358,241 27
Avon, Geneseo and Mt. Morris R. R.	15,000 00	
Erie and Genesee Valley R. R. gold	8,400 00	
		687,012 00
To *Suspension Bridge and Erie Junction R. R.:*		
Rent	70,000 00	
Less 30 per cent. of earnings	27,763 04	
		42,236 96
To *Paterson and Newark R. R.:*		
Rent	35,000 00	
Less 35 per cent. of earnings	22,022 47	
		12,977 53
Taxes State of New Jersey		19,374 62
Taxes, State of Pennsylvania		10,837 90
Erie proportion of loss operating Cincinnati, Hamilton and Dayton R. R., from Oct. 1, 1875, to Feb'y 29, 1876, inclusive		10,797 78
Claims prior to Oct. 1, 1874		24,177 94
Expenses of reorganization		4,414 71
		$5,170,070 71

To deficit for fiscal year ending Sept. 30, 1876 $1,229,630 19

Fiscal Year Ending September 30th, 1876. CR.

CREDITS TO REVENUE.

Brought forward	$3,940,440 52
By deficit for fiscal year ending Sept. 30, 1876	1,229,630 19
	$5,170,070 71

157 STATEMENT No. 2.—*Comparative Statement of Profit and Loss for Fiscal Years ending September 30th, 1875 and 1876.*

CREDITS.	1875.	1876.	INCREASE.	DECREASE.
Earnings Erie Railway and branches	$16,876,858 60	$15,852,461 14		$1,024,397 46
Working expenses	12,679,130 95	12,231,201 78		447,929 17
Net earnings	$4,197,727 65	$3,621,259 36		$576,468 29
Pavonia ferries. Earnings	219,163 98	234,286 08	$15,122 10	
Pavonia Horse Railroad. Earnings	24,098 69	21,273 18		2,825 51
Erie Baggage Express. "	71,020 46	70,228 40		792 06
Weehawken docks. "	66,061 45	50,509 20		15,552 25
Grand Opera House property rents	36,095 25	26,526 82		9,568 43
Unclaimed baggage and freight dep't receipts	6,586 64	2,249 60		4,337 04
Interest on securities	205,625 21	281,260 65	75,635 44	
Buffalo, Bradford and Pittsburgh R. R. royalty on oil		970 26	970 26	
Total credits	$4,826,379 33	$4,308,563 55		$517,815 78
DEBITS.				
Pavonia ferries. Expenses	$207,922 91	$197,813 42		$10,109 49
Pavonia Horse Railroad. Expenses	35,595 54	26,904 14		8,691 40
Erie Baggage Express. "	64,557 11	58,420 60		6,136 51
Weehawken docks. "	*130,021 43	37,061 77		92,959 66
Grand Opera House property. Expenses	50,950 86	44,182 72		6,768 14
Unclaimed baggage and freight dep't. Expenses	5,386 74	3,740 38		1,646 36
Interest on funded debt	3,761,964 50	3,761,964 50		
Long Dock Company. Interest	210,000 00	210,000 00		
Weehawken docks. "	66,671 93	64,453 24		2,218 69
Guaranteed int., Boston, H. and Erie R. R. bonds	133,000 00	133,000 00		
Interest on loans, etc.	175,412 89	156,007 52		19,405 37

Interest on mortgages, etc.	31,382 28	29,175 68		2,206 60
Gold premium	114,247 34	3,640 33		110,607 01
Rentals of leased lines	689,013 25	687,012 00		2,001 25
Suspension Bridge and Erie Junc. R. R. rent	38,705 02	46,236 96	3,531 94	
Paterson and Newark Railroad. Rent	11,892 52	12,977 53	1,085 01	
Erie proportion of loss operating C. H. and D. R. R.	62,804 07	10,797 78		52,006 29
Taxes. State of New Jersey	19,337 33	19,374 62	37 29	
" " " Pennsylvania	81,635 14	10,837 90		70,797 24
Claims prior to October 1st, 1874	149,109 85	24,177 94		124,931 91
Mileage of Jefferson Car Co.'s cars, 9 mos.	94,500 00			94,500 00
London transfer office. Expenses	39,688 39			39,688 39
Legal expenses. London	5,745 00			5,745 00
Expenses of reorganization		4,414 71	4,414 71	
Total debits	$6,179,544 10	$5,538,193 74		$641,350 36
Deficits	$1,353,164 77	$1,229,630 19		$123,534 58

* The expenses of the Weehawken oil docks in 1875 included the renewal of the piers and fixtures destroyed by fire in 1874, while those for 1876 are the ordinary expenses for labor, taxes, insurance, etc.

The insurance of $79,239.60 against the fire was applied in the reduction of the mortgage on the property.

DR. STATEMENT NO. 3. CR.

To deficit, as per profit and loss statement for 1875–6	$1,229,630 19	By interest on funded debt in default	$2,877,785 00
To surplus	1,648,154 81		
	$2,877,785 00		$2,877,785 00
		By surplus for fiscal year ending September 30, 1876	$1,648,154 81

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STATEMENT No. 4.

Earnings, Erie Railway and Branches.

From—	1875–6.	1874–5.	Increase.	Decrease.	Percent. Inc.	Percent. Dec.
Gen'l freights	$8,252,783 95	$8,022,658 58	230,125 37		2 9/10	
Coal "	3,177,145 75	4,264,741 27		$1,087,595 52		25 5/10
Express	398,882 94	503,953 40		105,070 46		20 8/10
Passengers	3,427,626 45	3,461,304 31		33,677 86		1
Mails	400,077 09	400,656 73		579 64		1/10
Rents	60,857 74	64,826 21		3,968 47		6 1/10
Miscellaneous	135,087 22	158,718 10		23,630 88		14 9/10
Total	$15,852,461 14	$16,876,858 60		$1,024,397 46		6 1/10

STATEMENT No. 5.

Expenses, Erie Railway and Branches—Freight.

Department.	1875–6.	1874–5.	Increase.	Decrease.	Percent. Inc.	Percent. Dec.
Cond'tg. transp'n.	$3,307,157 86	$3,209,955 04	$97,202 82		3	
Motive power	2,857,771 95	2,770,086 95	87,685 00		3 1/10	
Maintenance way.	1,828,072 44	2,335,138 12		$507,065 68		21 7/10
Maintenance cars.	852,274 25	861,447 18		9,172 93		1 1/10
Gen'l expenses	361,958 84	471,159 29		109,200 45		23 2/10
Total	$9,207,235 34	$9,647,786 58		$440,551 24		4 6/10

STATEMENT No. 6.

Expenses, Erie Railway and Branches—Passenger.

Department.	1875–6.	1874–5.	Increase.	Decrease.	Percent. Inc.	Percent. Dec.
Cond'tg. transp'n.	$1,129,495 05	$1,040,189 75	$89,305 30		8 6/10	
Motive power	781,129 00	804,794 00		$23,665 00		2 9/10
Maintenance way.	609,357 52	778,308 11		168,950 59		21 7/10
Maintenance cars.	383,331 91	250,967 91	132,364 00		53	
Gen'l expenses	120,652 96	157,084 60		36,431 64		23 2/10
Total	$3,023,966 44	$3,031,344 37		$7,377 93		2/10

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STATEMENT No. 7.

Total Expenses, Erie Railway and Branches.

Department.	1875–6.	1874–5.	Increase.	Decrease.	Percent. Inc.	Percent. Dec.
Cond't'g transp'n	$4,436,652 91	$4,250,144 79	186,508 12		4 4/10	
Motive power	3,638,900 95	3,574,880 95	64,020 00		1 8/10	
Maintenance way	2,437,429 96	3,113,446 23		$676,016 27		21 7/10
Maintenance cars	1,235,606 16	1,112,415 09	123,191 07		11 1/10	
General expenses	482,611 80	628,243 89		145,632 09		23 2/10
Total	$12,231,201 78	$12,679,130 95		$447,929 17		3 5/10

STATEMENT No. 8.

Miles Run by Trains, Erie Railway and Branches.

By—	1875–6.	1874–5.	Increase.	Decrease.	Percent. Inc.	Percent. Dec.
Passenger trains	3,201,005	3,202,392		1,387		4/10
Freight trains	7,507,842	*7,598,516		90,674		1 2/10
Switching trains	1,808,117	*1,806,508	1,609		9/10	
Other trains	115,401	155,454		40,053		25 9/10
Total	12,632,365	12,762,870		130,505		1

*These were combined under the one heading of "Freight" in 1874–5.

STATEMENT No. 9.

Traffic on Erie Railway and Branches.

Description.	1875–6.	1874–5.	Increase.	Decrease.	Percent. Inc.	Percent. Dec.
No. passengers	5,042,831	5,052,855		10,024		2/10
Passengers carried one mile	163,074,795	155,396,804	7,677,991		4 9/10	
Tons gen'l freight	2,665,174	2,387,376	277,798		11 7/10	
Tons coal	3,307,644	3,852,567		544,923		14 1/10
Tons gen'l freight carried one mile	775,508,343	678,257,229	97,251,114		14 3/10	
Tons coal carried one mile	264,923,578	338,360,821		73,437,243		21 7/10

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STATEMENT No. 10.

Traffic on Erie Railway and Branches.—Condensed.

Description.	1875–6.	1874–5.	Increase.	Decrease.	Percent. Inc.	Percent. Dec.
No. passengers	5,042,831	5,052,855		10,024		$\frac{2}{10}$
Passengers carried one mile	163,074,795	155,396,804	7,677,991		$4\frac{9}{10}$	
Tons freight	5,972,818	6,239,943		267,125		$4\frac{3}{10}$
Tons freight carried one mile	1,040,431,921	1,016,618,050	23,813,871		$2\frac{3}{10}$	

The coal and other supplies transported for the company's own use amounted to 515,366 tons, thus swelling the aggregate tonnage for the year to 6,488,184 tons.

STATEMENT No. 11.

Comparative Statement of Earnings and Expenses per Train Mile and per Unit of Traffic, 1874–5 *and* 1875–6.

Erie Railway and Branches.

Description.	1875–6.	1874–5.	Inc.	Decrease.	Percent. Inc.	Percent. Dec.
Earnings per freight-train mile	$1 52	$1 62		$0 10		$6\frac{2}{10}$
Expenses per freight-train mile	1 22	1 28		06		$4\frac{7}{10}$
Net earnings per freight-train mile	30	34		04		$11\frac{8}{10}$
*Earnings per passenger-train mile	1 32	1 36		04		3
Expenses per passenger-train mile	94	94		00		0
Net earnings per passenger-train mile	38	42		04		$9\frac{5}{10}$
Earnings per ton per mile	cents 1.098	cents 1.209		cents .111		$9\frac{2}{10}$
Expenses per ton per mile	" .885	" .958		" .073		$7\frac{6}{10}$
Net earnings per ton per mile.	" .213	" .251		" .038		$15\frac{1}{10}$
Earnings per passenger per mile	" 2.102	" 2.227		" .125		$5\frac{6}{10}$
Expenses per passenger per	" 1.854	" 1.950		" .096		$4\frac{9}{10}$
Ner earnings per passenger per mile	" .248	" .277		" .029		$10\frac{5}{10}$

*Including mails and express.

162 *Summary.*

The following is a summary of your financial transactions as receiver during the year beyond what is already shown in the profit and loss account, viz:

Surplus for fiscal year ending September 30, 1876, as per statement No. 3		$1,648,154 81
Add means realized from sources as follows:		
Cash on hand October 1, 1875		351,029 62
Lehigh Valley R. R., third rail		716,875 00
Increase of amounts due to other companies and individuals on current accounts:		
Rentals of leased lines	46,318 91	
Foreign roads	204,418 45	
Accrued interest, Boston H. and E. bonds	105,000 00	
Glenwood Coal Co.	33,532 93	
Towanda Coal Co.	16,956 97	
Sundry companies and individuals	4,649 60	
		410,876 86
Reclamations		89,405 49
Decrease of materials and supplies		153,257 01
" amount due by freight agents		249,247 95
Increase of amounts payable for current expenditure		3,280 72
Assets of the Erie Railway Co., collected in account:		
Pullman Palace Car Co.	103,410 75	
Sundry sources	59,054 96	
		162,465 71
Sundry assets of the Erie Railway Co., transferred		71,202 02
Claims of the Erie Railway Co., recovered		319,594 51
Reduction of miscellaneous assets		56,304 32
Outstanding coupons which have matured during the present fiscal year:		
First mortgage coupons of November, 1875, and March, 1876	980 00	
Second mortgage coupons of March and September, 1876	17,990 00	
Third mortgage coupons of March and September, 1876	28,595 00	
Fourth mortgage coupons of April and October, 1876	105,280 00	
Buffalo branch mortgage coupons of January and July, 1876	168 00	
		153,013 00
Total to be accounted for		$4,375,707 02

163 This amount has been expended as follows, viz:

Reduction in floating debt			$423,994 65
Construction main line, consisting of new side tracks and other permanent improvements, viz:			
Ballast		226 70	
Bridge masonry		197 25	
Chairs and splices		826 23	
Cross-ties		8,421 67	
Fencing		136 61	
Foreman and tool-houses		248 90	
Frogs and switches		2,574 13	
Grading		5,228 86	
Incidentals		54 46	
Rails—iron		21,510 03	
Right of way		530 30	
Road superstructure		7,874 35	
Spikes and bolts		1,510 83	
		49,340 32	
Third rail, between Elmira and Buffalo		1,060,032 18	
Machine shops, engine houses, etc.		7,052 35	
" improvements in Dunkirk shops, transferred by Brooks' Locomotive Works		10,405 64	
Rails—steel (difference in value between steel and iron)		120,377 22	
Stations and warehouses		11,560 13	
Wharfing		65 28	
			1,258,833 12
Equipment:			
Cars burden		4,000 00	
Car floats (N. Y. harbor)		30,364 49	
Machinery for shops		562 50	
Steamboats		158 38	
			35,085 37
Real estate			1,947 04
Alterations and additions to general office			5,437 62
Construction on branch lines, consisting of permanent improvements and additions outside of repairs, viz:			
Avon, Geneseo and Mt. Morris R. R.		1,108 18	
Buffalo, Bradford and Pittsburgh R. R.		708 49	
Erie, International branch		3,107 59	
Hawley branch		5 00	
Jefferson branch		2,138 74	
Montgomery and Erie R. R.		1,026 95	
Newark and Hudson R. R.		2,244 13	
Rochester and Genesee Valley R. R.		1,458 81	
Paterson and Newark R. R. const'n	$1,489 26		
Real estate	13,550 00		
		15,039 26	
Suspension Bridge and Erie Junc. R. R.			
Construction	$4,981 77		
Third rail	437 50	5,419 27	
			32,256 42
Carried forward			$1,757,554 22

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Brought forward		$1,757,554 22
Oak Cliff docks—Construction		7,734 42
Construction of car hoists at Leavittsburgh and Mansfield, Ohio		14,335 21
Increase of amounts due by other companies and individuals:		
Hillside Coal and Iron Company, advances	171,814 01	
N. Western Mining and Exchange Co. advances	87,996 02	
U. S. Post Office Department	165,541 39	
Sundry companies and individuals	71,847 77	
Avon, Geneseo and Mt. Morris R. R., rental	3,406 00	
		500,605 19
Increase of cash in transit from agents		162,945 00
Purchase of stocks, bonds, etc.:		
National Stock Yard Co., stock	5,000 00	
Union Steamboat Co. "	89,450 00	
Susp. Bridge and Erie Junc. R. R. Stock	6,893 32	
Pavonic Horse R. R.—Bonds	820 00	
National Stock Yard Co.—Bonds and coupons	16,069 44	
Buffalo, N. Y. and Erie R. R.—Bonds	255,000 00	
		373,232 76
Stocks and bonds recovered:		
Suspension Bridge and Erie Junc. R. R. stock	50,000 00	
Northern Central R. R. 7 p. c. income bonds (exchanged for 5 p. c. 2d mortgage bonds)	350,000 00	
		400,000 00
Reduction of amount of coupons outstanding, October 1st, 1875		176,883 00
Reduction of miscellaneous liabilities:		
Rentals of leased lines	8,286 13	
Jefferson Car Co. on account of equipment	250,000 00	
Charles Robinson on account of National Stock Yard Company's stock	50,000 00	
Sundry companies	36,000 00	
		344,286 13
Amounts advanced for purposes of reorganization and litigation in London		17,000 00
Balance of sundry adjustments, etc., to revenue of previous year		3,105 85
Liabilities of the Erie R'y Co., paid and settled in account:		
Rental of leased lines	65,834 68	
Mortgages, real estate	62,501 60	
Miscellaneous liabilities	16,159 14	
		144,495 42
Liabilities of the Erie R'y Co., transferred:		
Rentals of leased lines		5,138 58
Increase of amounts due by passenger agents and conductors		59,447 15
Total amount appropriated		$3,966,763 93
Balance of cash on hand, October 1st, 1876		$408,943 09

165 In addition to the foregoing we received during the year, from the estate of James Fisk, Jr., 990 shares of the stock of the Brooks Locomotive Works, of the par value of $100 each, which, together with the 990 shares already owned by the company, and represented in the reclamation account of the company's books, were surrendered to the Brooks Locomotive Works in your settlement with that company under contract of May 25th, 1876.

The cost of road and equipment, per statutory report of September 30, 1875, was $115,995,946.63, and per present report (including $1,060,032.18 for third rail, Elmira to Buffalo), $117,140,287.47, or an increase of $1,144,340.84. In point of fact, however, the increase for the year was $1,301,303.15; but, owing to adjustments made during the year for erroneous debits to this account in former years, the sum of $156,962.31 was written out to various other accounts.

Our working expenses are shown in the State Report under the three general heads of—

"Expenses of Maintaining the Road or Real Estate of the Corporation."

"Expenses of Repairs of Machinery," and

"Expenses of Operating the Road,"

into which our classification of expenses, under the general heads of—

"Conducting Transportation,"

"Motive Power,"

"Maintenance of Way,"

"Maintenance of Cars," and

"General Expenses"

is merged.

166 You have thus before you the results of the fiscal year; but I deem it proper in this connection to advert briefly to the results for the period from your appointment as receiver until September 30, 1875.

The net revenue for that period, after all charges to it, was $27,551.80, or, if the interest on funded debt in default ($997,941.58) be eliminated, $1,025,493.38.

This was expended mainly as follows:

Reduction of floating debt	$550,626 79
Charges necessarily incurred other than for working expenses, etc., as per statement No. 13	374,751 92
	$925,378 71

STATEMENT No. 12.

Comparative Statement of Floating Debt.

June 1st, 1875, and September 30th, 1876.

Description.	June 1st, 1875.	September 30th, 1876.		Increase.	Decrease.
		Details.	Totals.		
Bills payable:					
Erie Railway Co.	$751,158 27	$11,066 45	$33,060 46		$718,097 81
Receiver's certificates issued on acc't of vouchers		21,994 01			
Loans payable:					
Erie Railway Co.	1,327,031 01	105,000 00	1,126,000 00		201,031 01
Loans secured by collaterals		81,000 00			
Loans for which receiver's certificates were issued		940,000 00			
Bills audited (old account):					
Erie railway Co.	151,101 49	53,920 16	53,920 16		97,181 33
Vouchers audited:					
Erie Railway Co.	900,249 34	22,946 30	1,394,687 77	$494,438 43	
Receiver (including September vouchers)		1,371,741 47			
Pay rolls (including September rolls)	1,698,162 04	1,245,412 32	1,245,412 32		452,749 72
Totals	$4,827,702 15	$3,853,080 71	$3,853,080 71	$494,438 43	$1,469,059 87
	3,853,080 71				494,438 43
Net decrease	$974,621 44				$974,621 44

TOM NICKALS AND SIDNEY CLARIS.

168 STATEMENT No. 13.

Charges necessarily incurred other than for Working Expenses, and also charges for authorized Investments of Earnings, from May 27th to September 30th, 1875, inclusive, viz:

Construction, Main Line.

Consisting of new side tracks and other permanent improvements:		
Ballast	$86 25	
Bridge masonry	6,457 73	
Bridge superstructure	2,528 36	
Chairs and splices	894 73	
Cross ties	6,249 06	
Engineers, salaries of	1,011 10	
Fencing	155 12	
Foremen and tool houses	57 32	
Frogs and switches	1,675 68	
Grading	9,600 90	
Incidentals	5 80	
Rails, iron	30,951 70	
Right of way	175 00	
Road superstructure	12,389 72	
Spikes and bolts	1,724 74	
		$74,063 81
Machine shops, engine-houses, etc.		302 59
Rails, steel (difference in value between steel and iron)		13,606 19
Stations and warehouses		6,195 08
Wharfing		87 96
		94,255 63

Equipment.

Cars, burden		1,282 50
Jefferson Car Co. on account of equipment		50,000 00
Real estate		158 75
Alterations and additions to general offices		3,571 72
		149,268 60

Construction, Branch Lines.

Permanent improvements and additions outside of repairs:			
Avon, Geneseo & Mt. Morris R. R.		2,777 91	
Erie International Railway:			
Construction	$4,937 22		
Real estate	1,500 00		
		6,437 22	
Jefferson Branch		2,595 40	
Paterson & Newark R. R.		187 10	
Suspension Bridge & Erie Junc. R. R.		3,258 46	
Goshen & Deckertown "		374 51	
Rochester and Gen. Valley "		556 23	15,686 83
Carried forward			$164,955 43

169 STATEMENT No. 13—Continued.

Amount carried forward		$164,955 43
Weehawken docks, construction		6,806 85
Glenwood Coal Co., advances	5,732 88	
Hillside Coal & Iron Co., advances	96,597 23	
N. Western Mining & Exchange Co., advances	70,657 93	
		172,988 04
Erie & Milwaukee line, advances		1,500 00
Chas. Robinson, on acc't of Nat'l Stock Yard Co., stock		3,000 00
Erie Railway Co., mortgages, real estate		25,501 60
Total		$374,751 92

The entire reduction, therefore, in the floating debt, since your appointment as receiver, has been $974,621.44, as per Statement No. 12.

Very respectfully, S. LITTLE, *Auditor.*

170 REPORT OF CHIEF ENGINEER.

ERIE RAILWAY COMPANY,
OFFICE OF CHIEF ENGINEER,
NEW YORK *December* 11, 1876.

H. J. Jewett, Esq.,
President and receiver Erie railway.

SIR: I have, at your request, prepared the following statement and estimate of cost of the improvements which seem most desirable for the Erie railway:

1. *Narrowing Gauge.*

The third rail is now complete from Waverly to Buffalo. The estimated cost was $1,042,662 and the actual cost has been $1,060,032.18.

By extending this third rail from Waverly to Jersey City, a distance of 255 miles, a continuous connection of standard gauge will be established with Buffalo and with all the railroads (except the Atlantic and Great Western R. R.) on which the foreign business of the Erie railway originates, so that the cars of four feet eight and a half inches gauge can come through to New York without transferring of loads or car bodies.

As the road is double-tracked part of the way this third rail would be required on 467 miles of main track and 113 miles of side track, and, if laid with steel, is estimated to cost $2,100,096.

This done, the existing broad-gauge rolling stock can be gradually changed by rebuilding the locomotives and cars for standard gauge, as they require renewal.

2. *Steel Rails.*

The road and branches worked by the Erie comprise 956 miles of railway.

On these the aggregate of main tracks and sidings amounts to

1,616 miles, of which 341 miles are laid in steel and 1,275 miles in iron. On a portion of the latter, being upon branches and upon sidings where the traffic is not very heavy, steel may be deferred.

171 It is estimated that steel should be substituted for iron on 660 miles of main track, and that the cost of doing so, allowing for the value of the old rails taken up, will be $1,320,000.

3. *Double Track.*

Three hundred and five miles of the line consist of double track and 651 miles are single. Of these the portions where the existing traffic is most cramped for want of additional tracks are the remainder of the main line between Jersey City and Buffalo, 132¼ miles; from Hornellsville to Tiptop Summit, 12½ miles, and from Olean to Salamanca, 18 miles, on the Western Division; from Hawley to Lackawaxen, on the Hawley Branch, 16 miles, and from Greycourt to Newburgh, on the Newburgh Branch, 18 miles (to accommodate the coal business), as well as between Hampton and Jersey City, on the Eastern Division, where the pressure of the traffic is now too great to be economically accommodated by the existing two tracks. It is proposed to relieve this portion of the line by a series of loop lines, which will avoid, without material increase of distance, some very objectionable gradients upon the existing line. The whole of these additional tracks, together with passing tracks upon which freight trains may be overtaken and passed by passenger trains proceeding in the same direction, are estimated to cost $4,535,000, as shown in detail on the estimate herewith.

4. *Engine-houses and Shops.*

From fifty to ninety locomotives stand out in the weather every night for want of adequate engine-house room, and the cost of repairs of locomotives and cars is materially enhanced by the lack of efficient shops and tools. It is estimated that it will cost $295,000 for engine-houses and $1,350,000 for shops and tools, in order to secure these requirements for the protection and proper preservation of the engines and equipment of the company.

5. *Stations and Sidings.*

Many of the sidings and stations where trains are sorted and made up are not only inadequate in extent, but, having grown up piecemeal, they are ill-arranged for economical working. They should be remodeled and extended.

A number of the passenger stations are also in need of renewal to replace those which have been either burned or worn out or
172 which no longer afford the necessary accommodation to the public. The most expensive of these will be at the principal terminal points, Jersey City and Buffalo. It is estimated that a total of $1,277,000 should be expended in this class of improvements.

6. *Bridges.*

There are 173 wooden bridges on the line, and only 58 of iron. A number of the former are nearly worn out, and all considerations of economical future maintenance, and of avoidance of interruptions to the traffic, point to iron as the suitable material for their renewal. The cost is estimated at $850,000.

I have also estimated that $65,000 would be required to line a portion of and ventilate Bergen tunnel, and $50,000 for additional transfer floats at New York.

7. *Terminal Facilities at New York.*

In consequence of the rivalry between the railroads, the practice has grown up to deliver goods without extra charge all over New York harbor. Much of this could be avoided, and the expense of extra handling and carting saved to the consignees by providing storage warehouses at the Jersey City terminus, where the goods could remain until resold to the consumers or exporters. An elevator and store to hold 1,000,000 bushels of grain is estimated to cost $550,000, and a set of warehouses for merchandise are estimated at $950,000. It is believed they would prove profitable in themselves, in addition to the saving in expense they would produce for the railway.

8. *Rolling Stock.*

If the above improvements be carried out, additional engines and cars will be required to accommodate the increased traffic consequent upon the change of gauge, as well as to furnish equipment of standard gauge. I estimate that 2,000 new freight cars and 100 locomotives would be required, and I recommend that a portion of the latter should be of the "consolidation" type for freight. These engines are nearly twice as powerful as the ordinary standard locomotives, while the weight per wheel is about the same, and the destructive effect on the track not much greater. They have
173 proved satisfactory on roads on which they have been introduced, and their use would bring about a notable economy in the cost per freight-car mile.

The following estimate shows the cost of the various improvements above mentioned. It is a compendium of those furnished to you last summer, and agrees with them in total amount, except that the cost of the third rail from West Junction to Buffalo, estimated at $1,042,662 (but now completed at the actual cost of $1,060,022.18), has been left out, and that I have added $2,200,000 for cost of additional rolling stock, which was omitted from the former estimates furnished by the engineer department, although they were, I believe, included in those from the operating department:

Estimated Cost Improving Erie Railway.

Extending third rail, Waverly to Jersey City		$2,100,096
Substituting steel for iron, 660 miles		1,320,000
Completing second track, Delaware Division, 43 miles	$470,000	
Completing second track, Susquehanna Divison, 21¼ miles	233,000	
Completing second track, Buffalo Division, 52 miles	885,000	
Completing second track, Part Hawley Branch, 16 miles	400,000	
Passing tracks for freight trains	175,000	
Third and fourth tracks, Jersey City to Rutherford	180,000	
Loop line, Rutherford to Ridgewood	256,000	
" Monroe to Hampton	1,001,000	
Second track, Greycourt to Newburgh	360,000	
" Hornellsville to Tiptop	275,000	
" Olean to Salamanca	300,000	
		4,535,000
Engine-houses at sundry points	295,000	
New machine shops and tools at sundry points	1,350,000	
		1,645,000
		$9,600,096
174 Brought forward		$9,600,096
Remodeling station and sidings, Jersey City	32,000	
Remodeling stations and sidings, Buffalo	60,000	
Remodeling stations on line of road	400,000	
New passenger station, Jersey City	254,000	
" " Buffalo	51,000	
" stations on line of road	480,000	
		1,277,000
Rebuilding wooden bridges with iron		850,000
Lining and ventilating Bergen tunnel		65,000
Additional transfer floats, New York		50,000
Elevator for grain (1,000,000 bushels), Jersey City		550,000
Warehouses for merchandise, Jersey City		950,000
		13,342,096
100 new locomotives, at $11,000	1,100,000	
2,000 new freight cars at $550	1,100,000	
		2,200,000
Total		$15,542,096

Respectfully submitted,

O. CHANUTE,
Chief Engineer.

175–176 SCHEDULE C.

Report of the board of directors of the New York, Lake Erie & Western R. R. Co. to the stockholders, for the fiscal year ending September 30, 1881.

177 OFFICE NEW YORK,
LAKE ERIE AND WESTERN RAILROAD CO.,
NEW YORK, *November* 29, 1881.

To the share and bond holders of the New York,
Lake Erie and Western Railroad Company:

The board of directors submit, herewith, their report of the operations of the company for the fiscal year ending September 30, 1881.

The gross earnings and operating expenses of the road, including all branches and leased lines, have been as follows:

Earnings.

From general freight	$11,126,149	24	
" coal	4,853,427	37	
" passengers	4,041,267	03	
" mails	167,459	56	
" express	384,346	42	
" miscellaneous	130,256	71	
" car service—freight	12,698	85	
			$20,715,605 18

Operating Expenses.

For conducting transportation	$5,851,335	11	
" motive power	3,782,861	42	
" maintenance of cars	1,056,805	15	
" maintenance of way	2,098,905	46	
" general expenses	466,322	92	
			13,256,230 06
Net earnings from traffic			$7,459,375 12
To which add earnings from other sources			844,305 96
Total			$8,303,681 08
178 From which deduct interest on funded debt, rentals of leased lines, and other charges			6,416,263 34
Leaving a net profit from the operations of the year of			$1,887,417 74

This amount, together with $109,988.25, received from the trustees during the year, from the assessment paid on the stock of the Erie Railway Company; $230,325.00 received from the sale of 5,000 shares of our common stock; $363,375.00 received in settlement

with the London Banking Association; $72,393.97 received in settlement with Bischoffsheim and Goldschmidt; $332,500.00 realized from sale of $350,000.00 Northern Central Railway Company's second mortgage bonds; $75,000.00 realized from the sale of stock of the Union Dry Dock Company, at par, and $10,000.00 from the sale of Lockport and Buffalo railway's bonds, at par, making in all $3,080,999.96, has been applied mainly to improvements of the road and property, and to the acquisition of equipment and real estate, as appears in detal in the reports of the vice president and auditor.

The earnings and expenses of the year, compared with those of 1880, show an increase in gross earnings of $2,022,496.32, an increase in operating expenses of $1,612,304.71, and an increase in net earnings of $410,191.61.

The merchandise freight carried, as compared with 1880, shows an increase in tonnage of 919,655 tons, being $19\frac{8}{10}$ per cent., an increase of 121,079,362 tons one mile, or $9\frac{4}{10}$ per cent., and a decrease in earnings from this source of $73,349.13, or $\frac{65}{100}$ per cent. The earnings per ton per mile on this class of traffic were $\frac{789}{1000}$ cent, a decrease from last year of $\frac{080}{1000}$ cent. The decrease in revenue, notwithstanding the large increase in tonnage, is due to the
179 long and fierce competition for business which has existed between the different lines, and which has resulted in lower rates for transportation than have been reached in many years.

The coal tonnage for 1881 amounted to 5,518,850 tons, being an increase over last year of 1,451,276 tons, or $35\frac{6}{10}$ per cent. The earnings from this source were $4,853,427.37, being an increase over last year of $1,661,810.41, or $52\frac{08}{800}$ per cent. The earnings per ton per mile on this class of traffic were $\frac{845}{1000}$ cent., an increase over last year of $\frac{107}{1000}$ cent.

This result cannot but be gratifying to the proprietors. It is practical evidence of the value of the great natural advantages which this company enjoys by reason of its close proximity to this source of traffic. The business is not only increasing largely in volume, but it has changed in character, so that we now carry it to Western points, thereby furnishing employment for a large number of our cars, which we were formerly obliged to send empty in that direction.

The earnings per ton per mile on all freight were $\frac{805}{1000}$ cent, and the expenses per ton per mile $\frac{529}{1000}$ cent, a decrease from last year of $\frac{5}{1000}$ cent.

The number of passengers carried during the past year, as compared with 1880, shows a large increase. The earnings from this traffic have increased $358,315.85.

The ratio of expenses to earnings was 64 per cent., being a decrease from 1879 of 6 per cent., and an increase over 1880 of 2 per cent.

The increase in the cost of operating the road for the past year is accounted for by the large increase in our freight and passenger traffic, at reduced rates, and the increased cost of labor and
180 material. Had we received the rates of 1880 for merchandise traffic, we would have earned an additional sum thereon

of $1,125,548.22, at a total percentage of cost of operation of the road of $60\frac{7}{10}$ per cent.

Car Service.

Special mention is made of this account for the reason that for the first time in the history of the company it shows a balance to the credit amounting to $12,698.85. This is one of the incidental advantages of the change of gauge, the owning of our own equipment, and our ability to exchange cars with all roads.

Capital Stock.

Of the $85.240,525.00 of Erie railway stock upon which assessments were paid, there has been issued in exchange therefor to September 30, 1881, the stock of this company as follows, viz:

Common stock	$76,443,100 00	
Preferred stock	7,632,200 00	
		$84,075,300 00

There is still held awaiting such exchange:

Common stock	$640,700 00	
Preferred stock	524,525 00	
		1,165,225 00
		$85,240,525 00

The articles of incorporation provide that any stock of the Erie Railway Company, the holders of which failed to pay the assessment, shall be foreited, and that the New York, Lake Erie and Western Railroad Company shall have the power to issue its own stock, which would have been applicable to exchange for such old stock had the assessment been paid, and sell the same for its own benefit. Under this authority there have been issued and disposed of during the year five thousand shares of the common stock of this company, leaving at present on hand and unissued of such common stock, 4,162 shares, and of preferred stock, $3,801\frac{3}{4}$ shares.

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The total amount of capital stock issued to September 30, 1881, is as above	$84,575,300 00
Amount of assented stock unissued	1,165,225 00
Amount on hand, subject to sale	796,375 00
Total amount authorized	$86,536,900 00

Assessment Fund.

The balance of the assessment fund remaining on hand and unexpended September 30, 1880, as per last report was	$131,244 63	
Less reduction for sterling exchange	1,306 60	
		$129,938 03
Of this sum we received from the trustees during the year $109,988.25, of which we have applied to improvements (as per auditor's report)	$105,202 84	
There has been disbursed in London for expenses, etc.	10,717 86	
		$115,920 70
Leaving a balance, September 30, 1881, in hands of trustees, London	$4,897 97	
In hands of treasurer	9,119 36	
		14,017 33
		$129,938 03

182 *Funded Debt.*

The funded debt of the company September 30, 1880, as per last report, was $67,173,744.85.

This amount has been decreased during the year $8,078.90, as follows:

There has been purchased and cancelled $11,000 of fourth mortgage bonds, and the holders of $13,000 of first consolidated mortgage bonds having assented to the plan of reorganization, as they were entitled to do, involved the issue, for the coupons thereof, of first consolidated funded coupon bonds to the amount of $2,921.10, thus increasing such coupons bonds to $3,702,157.20.

The total amount, therefore, of the funded debt, September 30, 1881, is $67,165,665.95.

The amount of first consolidated mortgage bonds at present unassented is $180,000.00.

For a more detailed statement of the business of the company, its earnings and expenses, and of its financial situation, reference is made to the report of the auditor hereto attached.

Improvements.

Reference is made to the report of Vice President Harris for information with regard to the improvements of the road and property of the company, made during the current year, as well as for his suggestions with regard to what is necessary for the future.

183 Much progress has been made in carrying into effect the programme marked out on the organization of this company for the improvement of its road and property, to the end that it might be more efficiently, economically, and successfully operated.

The results of the past year, when compared with those of preceding years, justify beyond all question the policy adopted and the steps taken in the direction of making such improvements, and, although much has been done, there yet remains a great deal to do. The success of the company depends upon its ability to perform its service with the greatest degree of economy and efficiency.

The tendency of the times is to a remarkably low rate for transportation service. To be able to perform the service required, every facility for the economical working of the road must be provided.

The effort of the managers of this company has been to put the property in condition to meet the state of affairs which they to some extent anticipated, and which is now fully upon us; and, although the competition for traffic has reduced rates to a point below that which was supposed to be at all remunerative, this company has, through its increased facilities and its ability to work with the highest degree of economy, been able to produce results which must be highly gratifying to its proprietors; and the managers of the company have no reason to doubt that if the policy heretofore adopted is diligently adhered to, and the improvements inaugurated and in contemplation are carried out to their completion, the net revenues of the company will continue to improve until they will be sufficient to meet all the requirements necessary to the absolute security of its creditors, and reach a point of being remunerative to its proprietors.

184 *Conclusion.*

The board is gratified to say that the various officers, agents, and employés of the company have performed the duties required of them with promptness and efficiency.

Respectfully submitted,

H. J. JEWETT, *President.*

185 NEW YORK, LAKE ERIE & WESTERN RAILROAD CO.,
OFFICE OF VICE PRESIDENT,
NEW YORK, *November* 21, 1881.

Hon. Hugh J. Jewett, President.

DEAR SIR: I submit the following report of the improvements of the road and equipment in the year ending September 30, 1881, and their present condition:

The Bergen county cut-off, from Rutherford to Ridgewood, ten miles, with double track, has been built and brought into use. The amount expended to September 30th was $481,500.16. This cut-off shortens the distance for all through freight trains one mile; avoids the heavy grades of the main line and the drawbridge at the Passaic river, where safety requires all trains to stop; keeps the stream of freight trains clear of the city of Paterson, where several important streets are crossed at grade, and where, consequently, slow speed is imposed by city ordinance, and, by separating the freight from the

tracks used by the passenger trains, avoids the delays to the former from having to yield the tracks to the latter, and enables the company to perform the passenger traffic with more promptness and more satisfactiorily to its customers. The saving in expense of the present freight business alone, from the reduced grades and distances, is a generous return on the investment.

A spur track is being built from the cut-off to the mills at Passaic, thus securing to this company the very large business, both coal and merchandise, of the present mills, and promoting the enlargement of the business at that point by providing superior facilities for the transportation of the raw material and manufactured products.

186 The passenger trains on the eastern division are so frequent, and so interfere with the regular movement of the freight trains, that several miles of third track should be built this year between Jersey City and Port Jervis. With this provision the freight trains can be run at more regular intervals, diminishing the danger of rear collisions and avoiding the simultaneous arrivals of many trains at Jersey City, where the facilities for taking care of them are so limited.

The second track and loops on the Buffalo division have been completed, except two miles at the Portage loop, where track is now being laid.

Additional side and third tracks amounting to 45.37 miles have been laid as follows:

Eastern Division

	Feet.	Total.
At Jersey City	19,329	
" Miles, 3 and 4	5,415	
" Switch, Hawthorne gravel pit	2,908	
" Paterson	1,180	
" Suffern	84	
" Weehawken	421	
" Piermont branch	396	
" Newburgh	573	
" Washingtonville	500	
" Woodburn	705	
" Goshen	341	
" Mile 76 (Otisville)	7,199	
" Closter	232	
" Kipps	289	
" Florida	237	
		39,809

7.54 miles.

187 *Delaware Division.*

	Feet.	Total.
At Port Jervis	1,626	
" Cochecton	830	
" Basket	314	
" Hancock	2,060	
		4,830
Hawley Branch—		
At East Hawley	4,504	
" Hawley	703	
		5,207
Jefferson Branch—		
At Cotrills	250	
" Carbondale	359	
		609
		10,646

2.02 miles.

Susquehanna Division.

	Feet.	Total.
At Susquehanna	14,146	
" Binghamton	1,415	
" Owego	772	
" Southport	24,782	
" Elmira	655	
" West Junction	377	
" Westons	150	
" Spooners	9,000	
		51,297
Passing track—		
At Southport		6,390
Third track—		
At Union	7,128	
" Waverly	7,791	
		14,919
		72,606

13.75 miles.

188 *Buffalo Division.*

	Feet.	Total.
At Buffalo	12,146	
" Tonawanda	3,139	
" Black Rock	3,841	
" Alexander	237	
" East Buffalo	3,717	
" " New Yard	52,800	
" Hornellsville	270	
" Warsaw and Gainesville	1,512	
" Dalton	70	
" Canaseraga	200	
" Linden	210	
" Dale	300	
" Town Line	301	
" Arkport	690	
		79,433

15.04 miles.

Rochester Division.

At Avon ..... 227 feet.

.043 miles.

Western Division.

		Feet.	Total.
Main line.	At Hornellsville	18,267	
	" Tip Top	1,940	
	" Friendship	289	
	" Olean	2,570	
	" Allegheny	660	
	" Salamanca	5,319	
	" Dayton	2,350	
			31,395
189 B. B. and P. Br.— At Bradford		2,822	
			2,822
B. and S. W. Br.— At North Collins		555	
	" Lawtons	110	
	" Collins	1,000	
	" Gowanda	545	
	" Dayton	150	
	" Merkhams	300	
			2,660
			36,877

6.98 miles.

Extensive improvements have been made in the arrangement and enlargement of the yard at East Buffalo.

The amount of business that could be done at Buffalo had been reached owing to the insufficient and badly-arranged track and transfer facilities there. The yard at East Buffalo has been laid out not only to meet the necessities of the present business, but so that it may be systematically expanded as the business of the road shall demand, and arranged so that there will be no interruption to each other by the several trains to and from their several points of delivery.

The amount expended on these improvements has been $213,759.66, exclusive of the amount paid for land.

The growth of the local traffic of Buffalo has required the extension of the freight yard and tracks appropriated to this purpose, and all the land between the railroad and Exchange street, east of Michigan street, has been acquired, except such as is used by its owners for coal business over this road, and tracks are being laid thereon.

The very valuable tract of land on the Blackwell canal, 1,116 feet on the canal, and extending to the lake 330 feet, has been acquired at a cost of $150,000, of which $89,865.98 has been
190 paid this year. This piece of land lies between the property owned jointly by this company and the Lehigh Valley Railroad Company and the property of the Buffalo Creek Railroad Company, also owned jointly with the Lehigh Valley Railroad Company.

Arrangements have been made for acquiring the land known as the South Channel property, owned by the city of Buffalo, and appropriated for the purposes of a south channel and subsequently abandoned. This strip is 200 feet wide and extends through the properties before mentioned, from the lake to the river.

The acquisition of these properties will enable the company to provide facilities for doing the large and growing coal business as well as to handle the ore, lumber, and other heavy and bulky products by way of the lakes, the demand for which we have been unable to meet on account of our limited water front.

The second track of the Erie International road, $1\frac{568}{1000}$ miles, has been built, and much of the grading for second track, from East Buffalo to Erie International Junction, $4\frac{3}{4}$ miles, has been done.

Much progress has been made towards bringing the road to the standard gauge.

The outer rail has been removed from Bergen to Paterson, by way of Newark, and from Hornellsville to Buffalo, and the track has been narrowed to the standard gauge on all the branches except from Lackawaxen to Hawley, 26 miles, where there are three rails, and from Suffern to Piermont, 18 miles, and Bergen to Nyack, 26 miles, where the tracks are broad gauge only.

Total length of road, including branches and leased roads, September 30, 1881, $1{,}020\frac{372}{1000}$ miles, of which $428\frac{719}{1000}$ miles are double track and $591\frac{653}{1000}$ miles are single track.

At the beginning of the year there were on hand 539 locomotives, of which 400 were broad gauge and 139 standard gauge.

In the year there have been built in company's shops, 4; re-
191 built, 61; condemned and torn down, 14; leased of Car Trust of New York, No. 2, 15; leaving on hand at the end of the year, 544, of which 326 were broad gauge and 218 standard gauge.

145 passenger and baggage cars and 3,235 freight cars have been brought to the standard gauge in the year.

The number of cars on the road September 30, 1881, was as follows:

	Standard Gauge.	Broad Gauge.	Total.
First-class passenger	196	29	225
Second-class and emigrant	69	9	78
Inspection	3	--	3
Pay	2	--	2
Baggage, express, and mail	101	1	102
Milk	38	3	41
Box freight	11,668	500	12,168
Box stock	366	118	484
Slat stock	732	--	732
Oil tank	259	2	261
Flat	659	56	715
Gondola	1,825	103	1,928
Gondola dump	3,762	--	3,762
Coal—8-wheel	2,227	2	2,229
Coal—4-wheel, $\{^{\text{B. G. } 1,210}_{\text{N. G. } 150}\}$ = 8-wheel	75	605	680
Caboose—8-wheel	50	1	51
Caboose—4-wheel	115	62	177
Gravel	50	--	50
Derrick and tool	21	10	31
Total	22,218	1,501	23,719

There has been paid in the year to the trustees of car trusts and others accounts of leased locomotives and cars $886,195 97

Amount of principal remaining to be paid for leased loco-
192 motives and cars in monthly, quarterly, and semi-annual installments, $4,732,962.55, of which about $935,000.00 is to be paid in 1882.

There has been expended on the engine-house and machine-shops at Hornellsville $106,637.36. These buildings will be fitted with tools and machinery and be ready for occupancy in the early spring, and, together with the other shops, will enable the company to narrow and build its own engines, and save the payment of large profits on new locomotives in times like the present, when the locomotive manufacturers have orders beyond their immediate capacity to fill.

The expenditures charged to construction account, etc., in the year have been as follows:

For second track		$297,546 77
" East Buffalo improvements		213,759 66
" side and third track		295,954 10
" bridges		19,231 27
For engine-houses, machine-shops, etc.:		
At Bergen	$24,589 72	
" Jersey City	1,000 00	
" Buffalo	6,188 63	
" Dunkirk	5,697 38	
" Hornellsville	106,637 36	
Miscellaneous	1,822 73	
		145,935 82
Machinery for shops		28,322 18
Stations and warehouses:		
At Jersey City	$2,061 88	
" Paterson	9,462 00	
" Buffalo	27,178 96	
" Hornellsville	10,085 65	
" Salamanca	1,276 20	
Miscellaneous	2,007 38	
		52,072 07
Narrow gauging road		22,337 19
Telegraph lines		1,024 93
New ferry, Newburgh		6,300 00
193 Right of way		2,705 00
Miscellaneous		14,774 72
Branches		101,101 86
		$1,201,065 57
Docks at Jersey City		$1,212 92
" Weehawken		24,611 82
Stock Yards, Fortieth street, New York		8,298 43
		$34,123 17
Real estate:		
At Jersey City		$62,120 00
" Buffalo, Blake docks	$89,865 98	
" " Lehigh docks	33,862 65	
" " Other real estate	140,878 36	
		264,606 99
Binghamton		19,808 40
Deposit		5,364 58
Rochester		10,000 00
Southport		6,127 00
Other places		744 25
		$368,771 22

Equipment, viz:	
Freight cars	$39,309 53
Passenger cars	14,535 88
Narrow gauging cars	80,936 70
Air brakes for locomotives	1,895 12
Narrow gauging locomotives	217,579 23
Car Trust of New York and others, for cars and locomotives	886,195 97
Four car floats	57,933 12
Two barges	17,500 00
Steamboats and tugs	14,000 00
Total	$1,329,885 55
Grand total	$2,933,845 51

194 Of the above, $105,202.84 was paid out of the assessment fund, viz:

For grading	$1,507 55
" right of way	2,250 00
" third track	2,942 40
" second track	32,756 39
" four car floats	56,936 00
" real estate	6,127 00
" station black rock	2,683 50
	$105,202 84

The road from Alton south has been put under construction, and is to be ready for business to the Philadelphia and Erie railroad at Johnsonburgh, thirty miles, by the summer of 1882.

The construction of this road will give a direct route to market for the coal from the Daguscahonda mines, and will open up a large and valuable traffic between that part of Pennsylvania and all points on the line of the roads of this company.

Notwithstanding the liberal additions that have been made to our coal-car equipment, the demand has far exceeded the provisions for their supply. All of our anthracite coal customers are ready to increase their business, and to meet this demand, as also that arising from the construction of the road above mentioned and other business that will be developed by new connections, arrangements have been made for the construction of 7,000 cars, to be leased of the Car Trust and to be paid for in twenty semi-annual instalments. The amount of the issue will be $3,800,000, and the cars are all to be delivered by the early summer.

There is urgent necessity for the immediate enlargement of the facilities for handling, storing, and delivering freight on the Hudson river, from the want of which the side tracks are at times blocked with loaded freight cars as far west as Elmira.

195 By the exchange of the National Stock Yard property for land at Weehawken, the company owns a very valuable tract, having 500 feet of water front in addition to the 2,000 feet of water front it before had at that place, giving in all a water front of 2,500 feet at Weehawken, of which only 1,000 is now improved.

Plans have been prepared for the development of the rest of the property by the construction of piers, with stock yards in the rear. The total estimated cost of construction of piers, bulkheads, tracks, filling, and stock yards is $1,094,800. Proposals have been invited for the construction of a part of this work with a view to its being brought into use by the early spring.

The rest of the Harsimus Cove property should also be improved as soon as possible, by extending the basin inland to near its western boundary, and building warehouses for the accomodation of our seagoing traffic. The estimated cost of this is $500,000.

A second track should be buiit between Hornellsville and Andover—16 miles—over the Tip-top summit, between the the Canisteo and Genesee rivers, and between Cuba and Friendship—8 miles—over the Cuba summit, between the Genesee and Allegheny rivers, and between Salamanca and Olean—18 miles.

The total cost of these pieces would be $700,000.

By the construction of second tracks over the summits pushers could be used on the Tip-top and Cuba grades, and the locomotives could haul over the division one-third more cars than now; and a second track from Salamanca to Olean would give relief to the Salamanca yard and promote despatch by furnishing a convenient place for the meeting of freight trains.

For the rest of the distance between Hornellsville and Salamanca the second track could be deferred for the present.

196 Whilst the improvements now in progress, together with those herein recommended, will place the road in condition to compete favorably with the other trunk roads, still further expenditures will be needed to meet the growing demands of the traffic and to establish the permanent prosperity of the road.

Respectfully,

ROBERT HARRIS.
Vice President.

197 *Report of the Auditor.*

NEW YORK, LAKE ERIE & WESTERN RAILROAD CO.,
AUDIT OFFICE,
NEW YORK, *Nov.* 21, 1881.

Hon. H. J. Jewett, president:

I beg to present herewith the following statements, constituting my report for the past fiscal year, viz:

The profit and loss account, showing the operations of the road its branches, leased lines, etc.

The condensed balance sheet, showing its financial condition as compared with the previous year.

The revised table of interest on funded debt for the fiscal years 1881 to 1884, inclusive.

The comparative profit and loss account for the fiscal years 1880 and 1881; and

The usual statistics of the traffic, compared with those of the previous six years.

The purpose of this comparison is to show, both in amount and per cent., the increase or decrease in 1880–1 over or from each of the preceding six years, thus covering that period of your administration for which such comparison is practicable.

Particular attention is called to table No. 5, wherein the increase in net earnings is shown, and to table No. 10, wherein the increase in freight and passenger traffic is set forth, that from 1875 to 1881, in the number of passengers transported one mile, being 29 per cent.; in the number of tons of freight (other than coal) transported one mile, 107 per cent., in the number of tons of coal transported one mile, 69 per cent., and in the number of tons of all freight transported one mile, 85 per cent., while the average freight-train load increased steadily in that period from 134 tons to 218 tons, or 62 per cent., and the average number of passengers per train 20 per cent.

That the gross earnings did not increase in proportion to this increased traffic is sufficiently apparent from the next table (No. 11), which shows the decreased rates per ton and per passenger per mile from all the six years, except 1879 for freight and 1877 for passengers.

I append also an additional table (No. 12), giving the freight tonnage and earnings for the last sixteen years, which shows still more signally the great increase of this traffic, and the decreased rates re-

ceived for carrying it in that period. It will be observed that it is now almost double what it was in 1872 and 1873, yet the earnings are not much in excess of what they were then, and only 37.6 per cent. greater than in 1866, against an increased tonnage movement of 314.7 per cent.

Very respectfully, S. LITTLE, *Auditor.*

198 DR. No. 1.—*Profit and Loss for Fiscal*

DEBITS TO REVENUE.

To *Working Expenses:*		
Conducting transportation	$5,851,335 11	
Motive power	3,782,861 42	
Maintenance of cars	1,056,805 15	
Maintenance of way	2,098,905 46	
General expenses	466,322 92	
		$13,256,230 06
To net earnings		7,459,375 12
		$20,715,605 18
To *Pavonia Horse Railroad:*		
Expenses	$23,735 54	
Interest on bonds	10,237 50	
	$33,973 04	
Earnings	22,853 20	
Loss		$11,119 84
To *Grand Opera House and Twenty-third Street Properties:*		
Expenses	$50,447 87	
Rents	50,012 90	
Loss		434 97
To *Unclaimed Baggage and Freight Department:*		
Expenses	$5,520 56	
Receipts	4,048 68	
Loss		1,471 88
To *Brooklyn Annex:*		
Expenses	$31,607 75	
Earnings	18,088 93	
Loss		13,518 82
To *Blake's Docks (Buffalo):*		
Expenses	$27,858 04	
Earnings	3,624 69	
Loss		24,233 35
Amount carried forward		$50,778 86

Year Ending September 30, 1881. CR. 199

CREDITS TO REVENUE.

By *Earnings:*		
Freight	$11,126,149 24	
Coal	4,853,427 37	
Passenger	3,445,507 01	
Second-class passenger and emigrant	595,760 02	
Mails	167,459 56	
Express	384,346 42	
Miscellaneous	85,792 05	
Rents	44,464 66	
Car service freight	12,698 85	
		$20,715,605 18
		$20,715,605 18
By net earnings		$7,459,375 12
By *Pavonia Ferries:*		
Earnings	$267,480 00	
Expenses	249,643 88	
Profit		17,836 12
By *New York, Lake Erie and Western R. R. Company's Baggage Express:*		
Earnings	$66,755 45	
Expenses	66,010 94	
Profit		744 51
By *Weehawken Docks:*		
Earnings	$55,362 99	
Expenses	15,379 80	
Profit		39,983 19
By *New York, Lake Erie and Western Elevator (Buffalo):*		
Earnings	$119,526 64	
Expenses	81,595 50	
Profit		37,931 14
By interest on securities		235,962 24
By sterling exchange		586 24
Amount carried forward		$7,792,418 56